The fyrste dya-
loge in Englyſ
ſhe/ with newe addycyons.

Ames p. 155. W.H. R. 378.

Author huius libri fuit Christopherus d' Sco Germano sine dubio prudens et Juris tum municipalis, tum civilis Canonici satis peritus. Cote en pr face a son 10th Report. Fuit conscriptus in lingua latina circa medium tempus. Veies plus d'le Author in latina Editione.

Here after fo loweth the fyrste Dyaloge in Englysshe/bytwyxt a Doctoure of Dyuynyte/and a Student in the Lawes of Englãde: of the groundes of the sayd Lawes, and of conscyence/newly correctyd: and eft sones Enprynted: with newe addycyons.

Will. Hardinge

A Doctoure of dyuynytie that was of great acquayntaunce / and famylyarytie with a Student in the Lawes of Englande sayde thus vnto hym / I haue had great desyre of lōge tyme to knowe wherupon the lawe of Englande is grounded / but bycause moche parte of the lawe of Englāde is wryten in the frenche tonge / Therfore I can not through myne owne studye atteygne to the knowlege therof: for in that tonge I am no thynge experte. And bycause I haue alwayes founde the a faythfull frende to me in all my busynes. Therfore I am bolde to come to the byfore any other to know thy mynde what be the very groundes of the lawe of Englande as thou thynkest. ¶ Student) that wolde aske a great leasure / and it is also aboue my cūnynge to do it. Neuerthelesse yt thou shalt not thynke that I wold wylfully refuse to fulfyll thy desyre: I shall with good wyll do that in me is to satyssye thy mynde / but I pray the that thou wylte fyrste shewe me somwhat of other lawes that pertayne most to this mater: and that Doctoures treate of howe lawes haue bygon.

And then I wyll gladly shewe the as me thynketh what be the groũdes of the lawe of Englande. ¶ Doctoure) I wyll with good wyll do as thou sayste: wherfore thou shalt vnderstande that Doctours treate of foure lawes / the whiche as me semyth pertayne moste to this mater. The fyrste is the lawe eternall. The seconde is the lawe of nature of reasonable creature / the which as I haue harde saye is called by them that be lernyd in the lawe of Englãde the lawe of reason. The thyrde is the lawe of god. The fourth is the lawe of man. And therfore I wyll fyrste treate of the lawe eternall.

¶ Of the lawe eternall.
The fyrste Chappytre.

Doctoure) lyke as ther is in euery artyfycer a reason of suche thynges as are to be made by his crafte / so lykewyse it behoueth that in euery gouernour there be a reason afore syght in the gouernour of suche thynges as shall be ordeyned & done by hym to them that he hath the gouernaũce of. An

for as moche as almyghtye god is the creatour and maker of all creatures/to the whiche he is compated as a workeman to his worke. And is also the gouernour of all dedes & mouynges that be founde in any creature. Therfore as the reason of the wysdom of god in asmoche as creatures be create by hym hath the reason & foresyght of all craftes & warkes that haue ben or shal be/so the reason of the wysdom of god mouynge all thynges by hym made to a good ende/opteyneth the name & reason of a lawe/and that is called the lawe eternall. And this lawe eternall is called the fyrste lawe / and it is well called the fyrste / for it was byfore all other lawes. And all other lawes be deryuyed of it/ wherupō seynt Augustyn sayth in his fyrste boke of fre arbytrement that in temporall lawes no thynge is ryght wyse ne lawful/but that the people haue deryuyed to them out of the lawe eternall. Wherfore euery man hath ryght & tytle to haue that he hathe ryght wysly of the ryght wyse Iugement of the fyrste reason / whiche is the lawe eternall. ¶ Student) but howe may this lawe eternall be knowen/for as the apostle wryteth in the. v. chappytre of his fyr-

ste epystle to the Corynthyes. Que sunt dei nemo scit nisi spiritus dei. That is to say no man knoweth what is in god / but the spyryte of god / Wherfore it semeth that he openyth his mouth in to heuen that attempteth to know it. (Doctoure) this lawe eternall no man may knowe as it is in it selfe / but only blessyd soules that se god face to face / but almyghty god of his goodnes sheweth of it as moche to his creatures as is necessarye for them / for ells god shuld bynde his creatures to a thynge inpossyble: Whiche may in no wyse be thought in hym. Therfore it is to vnderstãde that thre maner of wayes almyghtye god maketh this lawe eternall knowen to his creatures resonable. Fyrste by the lyght of natural reason. Seconde by heuenly reuelacyon. Thyrdly by the ordre of a prynce: or of any other secũdarie gouernor that hath power to bynde his subgettes to a lawe. And whan the lawe eternall or the wyll of god is knowen to his creatures resonable by the lyght of naturall vnderstãdynge / or by the lyght of naturall reason / then it is called the lawe of reason. And when it is shewed by heuenly reuelacion in suche maner as hereafter shall appere / then

it is called the lawe of god. And when it is shewed vnto hym by the ordre of a prynce/ or of any other secundarye gouernoure that hath power to set a lawe vpon his subgetes/ then it is called the lawe of mā: though orygynallye it be made of god / for lawes made by man / that hathe receyued therto power of god be made by god. Therfore the sayd thre lawes: that is to saye/ the lawe of reason/ the lawe of god/ & the lawe of man the which haue seuerall names after the maner as they be shewed to man/ be called in god one lawe eternall. And this is the lawe of whom it is wrytten. Prouerbiorum octauo/ where it is sayd Per me reges regnant et legū conditores iusta decernūt: that is to say/ by me kynges Reygn̄/ and makers of lawes decerne the trewth. And this suffyceth for this tyme of the lawe eternall.

¶ Of the lawe of reason/ the whiche by Doctours is called the lawe of nature of resonable creature. The.ii. Chapit.

Doctour) Fyrste it is to be vnderstāde/ that the lawe of nature maye be consyderyd in two maners/ that is to saye/

generally and specyally / When it is consy-
deryd generally / then it is referryd to all cre
atures / aswell resonable as vuresonable /
for all vnresonable creatures lyue vnder
a certayne rewle to them gyuen by nature /
necessarye for them to the conseruacyon of
theyr beynge / but of this lawe it is not our
intent to treate at this tyme. The lawe of
nature specyally consyderyd: Whiche is also
called the lawe of reason pertayneth oonly
to creatures resonable that is man / Whiche
is create to the ymage of god. And this law
ought to be kept aswell amonge Jewes ⁊
gentyls / as amonge crysten men. And this
lawe is alway good ⁊ ryght wyse styryng
⁊ enclynynge a man to good / ⁊ abhorrynge
euyl: ⁊ as to the orderyng of the dedes of mā
it is p̄ferryd before the lawe of god. And it
is wryten ī the herte of euery man techynge
hym what is to be don ⁊ what is to be fled.
And bycause it is wryten in the herte / ther-
fore it may not be put awaye / ne it is neuer
chaūgeable by no dyuersytie of place ne ty-
me. And therfore agaynst this lawe prescri
pcyon statute nor custome may not preuay
le / and yf any be brought in agaynst it they
be no prescripcyons statutes nor customes /

ex natura
empingi-
gandum
bonit.

but thyngꝭ voyd & agaynst iustyce. And al other lawes as well the lawes of god / as to the actꝭ of mē as other be grouded therupō.
¶ Student) syth the lawe of reason is wryten in the herte of euery man / as thou haste sayd byfore techyng hym what is to be don and what is to be fled / and the which thou sayste maye neuer be put oute of the herte / what nedyd it then to haue any other lawe brought in to ordre the actꝭ and dedes of the people. ¶ Doctoure) though the lawe of reason maye not be chaunged nor holkye put away: neuertheles byfore the lawe wryten it was greatly lette and blynded by cuyll customes & by many synnes of the people be syde the originall synne / in so moche that it myght hardly be discernyd what was ryght wyse and what was vnryght wyse / & what good and what euyll / wherfore it was necessarye for the good ordre of the people to haue many thyngꝭ added to the lawe of reason as well by the Churche: as by secular princes accordynge to the maners of the countre and of the people / where such addycyons shuld be exercysed. And this lawe of reason dyfferyth fro the lawe of god in two maners / for the lawe of god is gyuen

by reuelacyon of god / and this lawe is gy/
uen by a naturall lyght of vnderstādynge
And also the lawe of god orderyth a man
of it selfe by a nyghe waye to the felycytie
that euer shall endure. And the lawe of rea
son orderyth a man to the felycytie of this
lyfe. ¶ Student) but what be tho thynges
that the lawe of reason techeth to be done/
and what to be fled / I pray the shewe me.
¶ Doctoure) the lawe of reason techyth that
good is to be loued / and euyll is to be fled/
Also that thou shalte do to another yᵗ thou
woldest another shuld do to the / also yᵗ we
may do no thyng agaynst trouth. Also that
a man muste lyue peacefully with other.
That iustyce is to be don to euery man: and
that wronge is not to be done to any man.
And also that a trespasser is worthy to be
punysshed and suche other / of the whiche fo
lowe dyuers other secundarye cōmaunde
mentes / the whiche be as necessarye conclu
syons deryuyed of the fyrste / as of that cō
maūdemēt that good is to be belouyd it fo
lowyth that a man shall loue his benefac
tour: for a benefactour ī that he is a benefa
tour includeth in hym a reason of goodne
for elis he ought not to be called a bñfactō

that is to say a good doct: but an euyll doct.
And so in that he is a benefactour / he is to
be belouyd in all tymes / and in all places.
And this lawe also sufferyth many thyn-
ges to be done / as that it is lawfull to put
awaye force with force. And that it is law-
full for euery man to defende hym self and
his goodes agaynst an vnlawfull power.
And this lawe renneth with euery mānes
lawe / and also with the lawe of god as to
the dedes of man / & muste be alwayes kept
and obseruyd / & shall alway declare what
ought to folowe vpon the generall rewles
of the lawe of man / & shall restrayne them
yf they be in any thynge contrary vnto it.
And here it is to be vnderstāde / that after
some men / that lawe wherby all thynges
were ī cōmon was neuer of the lawe of rea-
son / but onely in the tyme of extreme neces-
sytie. For they saye that the lawe of reason
may not be chaunged / but they say it is euy-
dent that yt lawe wherby all thyngs shuld
be in cōmen is chaūged / wherfore they con-
clude that it was neuer the lawe of reason.

¶ Of the lawe of god.
The. iiii. Chapytre.

Doctoure) the lawe of god is a certayne lawe gyuen by reuelacyon to reasonable creature she wyng hym the wyll of god wyllynge / that creature reasonable to be bounde to do a thynge or not to do it for optaynynge of the felycytie eternall And it is sayde (for the optaynynge of the fylycytie eternall) to exclude the lawes shewed by reuelacion of god for the polytycall rewle of the people the whiche be called Iudycyals: for a lawe is not properly called the lawe of god bycause it was shewyd by reuelacion of god / but also bycause it dyrectyth a man by the nerest waye to the felycytie ternall as ben the lawes of the olde Testament that be called morals / & the lawe of the Euangelystes: the which were shewyd in moch more excelent maner: then the lawe of the olde Testament was: for that was shewyd by the medyacyon of an Aungell But the lawe of the Euangelystes was shewyd by the medyacyon of our lorde Ihesu cristc god & man / and the lawe of god is alway ryght wyse and iuste / for it is made & gyuen after the wyll of god. And therfore all actes and dedes of man be called ryght

wyse & iuste when they be done accordynge to the lawe of god and be cõformable to it. Also somtyme a lawe made by man is called the lawe of god / As when a lawe taketh his pryncypall groũde vpon the lawe of god / and is made for the declaracyon or cõseruacyon of the fayth / and to put away heresyes as dyuers lawes Cannons / and also dyuers lawes made by the common people somtyme doo. The whiche therfore are rather to be called the lawe of god / then the lawe of man. yet neuertheles all the lawes Cãon be not the lawes of god. For many of them be made only for the polytycall rewle and conuersacyon of the people / wherupon Johñ Gerson i the treatyse of the spyrytuell lyfe of the soule the secoude Lesson / & the thyrde corollary sayth thus al the cãnõs of Popes nor theyr decres / be not the lawe of god. For many of them be made onely for the polytycall conuersacyon of the people. And yf any man wyll saye be not all the goodis of the Churche spyrytuell for they bylonge to the spyrytualytie and leed to the spyrytuelltie / We answere that in the hole polytycall conuersacyon of the people / there be some specyally deputed and de

dycate to the ſeruyce of god/the Which moſt ſpecially as by an excellencie are called ſpyrytuell men as relygyous mē ar. And other though they Walke in the Way of god. Yet neuertheles bycauſe theyr offyce is moſt ſpecyally to be occupyed aboute ſuche thynges as pertayne to the cōmon Welth/and to the good ordre of the people/they be therfore called ſeculer men or lay men/ neuertheles the goodes of the fyrſte may no more be called ſpyrytuell/thē the goodꝭ of the other for they be thynges mere temporall and kepyng the body as they doo in the other. And by lyke reaſon laWes made for the polytycall ordre of the Churche be called many tyme ſpyrytuell/or the laWes of god. Neuertheles it is but Vnpropicly: and other be called Cyuyle or the laWe of man. And in this poynt many be oft tymes deceyued/ and alſo deceyue other the Whiche Juge tho thyngꝭ to be ſpyrytuell/the Whiche all men knoWe be thynges materyall & carnall. Thyſe be the Wordes of Johñ Eerſon in the place allegyd byfore. Furthermore beſyde the laW of reaſon and the laWe of man it Was neceſſarye to haue the laWe of god for foure reaſons. The fyrſte bycauſe man is ordeyned to the

ende of eternal felycitie the which excedyth the proporcion & facultye of mānes power. Therfore it was necessarye that besyde the law of reasō & the law of man: he shuld be dyrectyd to his ende by a law made of god. Seconde for asmoch as for the vncerteinte of mānes Juge^t specially of thīgꝫ ꝑtyculer & seldom fallynge. It hapenyth oft tymes to folowe dyuers Jugementes of dyuers men/and also dyuersyties of lawes/& therfore to the entent that a man withoute any dought may knowe what he shuld do/and what he shulde not do/ It was necessarye that he shuld be dyrectyd in all his dedes by a lawe heuenly gyuen by god / the whiche is so apparant that no man maye swarue fro it as is the lawe of god. Thyrdly man may only make a lawe of such thynges as he may Juge vpon/and the Jugement of man may not be of inwarde thynges/ but only of outwarde thynges/& neuerthelesse it belongeth to perfeccyon that a man be well orderyd in both / that is to say aswell inwarde as outwarde. Therfore it was necessary to haue the lawe of god/ the whiche shuld ordre a man aswell of inwarde thynges as of outward thyngꝫ. The fourth is by

cause as saynt Augustyn sayth in the fyrste boke of frearbytrement / the lawe of man may not punysshe all offences: for yf all offencis shuld be punysshed / the cõmon welth shuld be hurte as it is of cõtractes / for it can not be auoydyd / but that as longe as contractes be sufferyd many offences shall folowe therby / & yet they be sufferyd for the cõmon welthe. And therfore that no cuyll shuld be vnpunysshed / it was necessary to haue the lawe of god that shulde leue no cuyll vnpunysshed.

¶ Of the lawe of man. The fourth Chapytre.

Doctoure) The lawe of mã the whiche somtyme is called the lawe posityue is destroyed by reason as a thinge whiche is necessaryly & probably folowyng of the lawe of reason / & of the lawe of god. And that is called probable yᵗ apperith to many & specyally to wyse men to be trewe. And therfore in euery lawe posityue well made is somwhat of the lawe of reason / and of

the lawe of god: and to discerne the lawe of god & the lawe of reason fro the lawe posityue is very harde / & though it be harde yet it is moche necessary in euery moralle doctryne / and in all lawes made for the cōmon welth. And that the law of man be Juste & ryght wyse / two thynges be necessary / that is to saye / wysdom & auctorytie / wysedom that he may Juge after reason / what is to be done for the cōmynaltie / and what is expedyent for a peasyble conuersacyon / and necessary sustentacyon of them / Auctorytie that he haue auctorytie to make lawes. For the lawe is named of / Ligare: that is to say to bynde. But the sentence of a wyse man doth not bynde the cōmynaltie yf he haue no rewle ouer theym. Also to euery good lawe be requyred thyse proprietes: that is to say that it be honest / right wyse / possyble in it selfe / & after the custome of the countree / conuenyent for the place and tyme / necessary / profytable / and also manyfest that it be not capcious by any darke sentēce ne mypt with any pryuate welth / but all made for the cōmon welth. And after saynt Bryget in the fourth boke in the. C. xpix. chapytre / euery good lawe is ordeyned to the helth of

the soule/ & to the fulfyllynge of the lawes of god: and to enduce the people to flye euyl desyres & to do good warkz. Also as the cardynall of Camer̄ wryteth what so euer is ryghtwyse in the lawe of man is ryghtwyse in the lawe of god/ for euery mānes law must be cōsonant to the lawe of god. And therfore the lawes of prynces/ the cōmaundementes of prelates/ the statutes of cōmynalties/ ne yet the ordyuaunce of the Churche is not ryghtwyse nor oblygatorye/ but it be consonant to the lawe of god. And of suche a lawe of man that is consonant to the law of god/ it apperyth who hath right to landes & goodes/ and who not: for what so euer a man hath by suche lawes of man he hath ryghtwyslye. And what so euer is had agaynst suche lawes is vnryghtwyslye had. For lawes of man not contrary to the lawe of god/ nor to the lawe of reason muste be obseruyd in the lawe of the soule/ and he that dyspyseth them dyspyseth god & resysteth god. And furthermore as Gracian sayth bycause euyll men fere to offende for fere of payne. Therfore it was necessarye that dyuers paynes shulde be ordeyned for dyuers offences as Physycyons orday-

ne dyuers remedyes for seuerall dysseases. And suche paynes be ordeyned by the makers of lawes after the necessytie of the tyme/and after the dysposycion of the people. And thoughe that lawe that ordeyneth suche paynes hath therby a confermytie to the lawe of god: for that the lawe of god cōmaūdeth that the people shall take away euyll from amonge them selfe/yet they belonge not so moche to the lawe of god/but yᵗ other paynes standyng the fyrste prynciples myghte be ordayned and appoynted/and therfore that is the lawe that is called most properlye the lawe posityue and the lawe of man. And the Phyloſopher sayth ī the thyrde boke of his Etykes/that the entent of a maker of a lawe is to make the people good and to bryngе them to vertue. And thoughe I haue somwhat in a generalytie shewyd the wherupon the lawe of Englāde is groūdyd. For of necessytie it must be groundyd of the sayd lawes/that is to say of the lawe eternall/of the lawe of reason/and of the lawe of god. Neuertheleſſe I praye the shewe me more specyally wherupon it is groūdyd as thou thynkest/as thou byfore haste promyſed to do. ¶ Student) I wyll with

good wyll doo therin that lyeth in me / for thou haſt ſhewyd me a ryght playne and a ſtrayte waye therto. Therfore thou ſhalte vnderſtande that the lawe of Englande is groundyd vpon ſyxe pryncyppall groũdes. Fyrſte it is groundyd on the lawe of reaſon. Seconde on the lawe of god. Thyrdly on dyuers generall cuſtomes of the realme. Fourthly of dyuers pryncyples that be called maxymes. Fyftly on dyuers partyculer cuſtomes. Syxtly on dyuers ſtatutz made in Parlyamentes by the kynge & by the cõmon Coũcell of the realme / of which groũdes I ſhall ſpeke by ordre as they be rehercyd byfore / & fyrſte of the lawe of reaſon.

¶ Of the fyrſte grounde of the lawe of Englande. The. v. Chapytre.

Student) The fyrſte grounde of the lawe of Englande is the lawe of reaſon / wherof thou haſte treatyd byfore in the ſeconde chapytre / the whiche is kepte in this realme as it is in all other realmes & as of neceſſytie it muſte nedes be as thou haſt ſaid byfore. ¶ Doctour)

What I wolde knowe what is called the
law of nature after the lawes of Englãde.
¶ Student) It is not vsed amonge them
that be lernyd in the lawes of Englãde to
reason what thynge is cõmaundyd or pro-
hybyt by the lawe of nature and what not:
but all the resonynge in that behalfe is vn
dre this maner: as when any thyng is groũ
dyd vpon the lawe of nature: they say that
reason wyll that suche a thyng be don/and
yf it be prohybyte by the lawe of nature.
They say it is agaynst reason or that reasõ
wyll not suffre that it be don. ¶ Doctoure)
Then I pray the shewe me what they that
be lernyd in the lawes of the realme holde
to be cõmaundyd or prohybyte by the lawe
of nature vndre suche termes and after su-
che maner as is vsed amongest theym that
be lernyd in the sayde lawes. ¶ Student)
There be put by them that be lernyd in the
lawes of Englãde two degrees of the law
of reason/that is to say/the lawe of reason
prymarye/and the lawe of reason secunda
rye/by the lawe of reason Prymarye be pro
hybyte in the lawes of Englande murther
that is the deth of hym that is Innocẽt/per-
iurye/dysceyte/brekynge of the peace (ma-

ny other lyke. And by the same lawe also it is lawfull for a man to defende hym selfe agaynst an vniuste power so he kepe due circūstaunce. And also yf any promyse be made by manas to the body it is by the lawe of reason voyde in the lawes of Englāde. The other is called the lawe of a secundarye reason/the whiche is deuyded in to two braunches/ that is to say in to the lawe of a secundarye reason generall. And in to a lawe of a secūdarye reason pertyculer. The lawe of a secūdarye reason generall is groūded and deryuyed of that generall lawe or generall custome of ꝓpretye wherby goodes mouable and vnmouable be brought in to a certayne ꝓpretye/so that euery man may knowe his owne thynge. And by this brauche be prohybyted in the lawes of Englande dyssesons/trespasse in landes & goodes resaues theft vnlawfull withholdyng of another mānes goodes & suche other. And by the same lawe it is a groūde ī the lawes of Englāde that satysfaccyon must be made for a trespasse/ & that restytucyon muste made of such goodes as one man hath that bylonge to another man/ that dettes muste by payde: couenauntes fulfylled and suche

other. And bycause dysseasons/trespasse in landes and goodes: theste & suche other had not ben knowen yf the lawe of proprietye had not ben ordeyned. Therfore all thynges that be dyryuyed by reason out of the sayde lawe of proprietye/be called the lawe of reason secundarye generall/for that lawe of proprietye is generally kept in all coūtrees. The lawe of reason secundarye pertyculer is that lawe that is dyryuyed vpon dyuers customes general and pertyculer and of dyuers mayymes & statutes ordeyned in this realme. And it is called the lawe of reason secundarye pertyculer bycause that reason in that case is deryuyed of suche a lawe that is oonly holden for lawe in this realme/& in none other realme.

¶ Addycyon.

¶ Doctoure) I pray the shewe me some specyall case of suche lawe of reason secundarye pertyculer for an example. ¶ Student) There is a lawe in Englande/whiche is a lawe of custome yt yf a man take a dystres lawfully that he shall put it in a pounde ouerte there to remayne tyll he be satysfyed of that he dystreyned for. And then theruppon may be asked this questyon that yf the

beestes dye in pounde for lacke of meate/ at whose peryll dye they/ whether dye they at the peryll of hym that dystreyned or of hym that oweth the beestes. ¶ Doctoure) yf the lawe be as thou sayste and then a man for a iuste cause takyth a dystres and putteth it in pounde ouerte and no lawe compellyth hym that dystreyneth to gyue them meate/ then it sempyth of reason that yf the dystres dye in pounde for lacke of meate/ that it dyeth at the peryll of hym that oweth the beestes & not of hym that dystreyned/ for ī hym that dystreyned there can be assygned noo defaute/ but in the other may be assygned a defaute bycause the rente was vnpayde.

¶ Student) thou hast gyuen a trewe Iudgement and who hath taughte the to do so/ but reason dyryuyed of the sayd generak custome. And the lawe is so full of suche secūdarye reasons dyryuyed out of the generall customes and maxymes of the realme that some men haue affermyd that all the lawe of the realme is the lawe of reason: but that can not be prouyd as me sempyth as I haue partly shewyd byfore and more fully wyll shewe after. And it is not moche vsyd ī the lawes of Englande to reason what lawe

is groũdyd vpon the lawe of the fyrst reaso
nymary/or of the lawe of reason secũdarye
for they be most cõmõly openly knowen of
them self/ but for the knowlege of the lawe
of reason secũdarye is greater dyffycultye/
& therfore therin depẽdyth moche the mater
and forme of argumentes in the lawes of
Englande. And it is to be noted that al the
deryuyenge of reason in the lawes of Eng
lande procedyth of the fyrste prynceples of
the lawe or of some thynge that is deryuy/
ed of them. And therfore no man may right
wysly Juge ne groũdly reason in the law
es of Englande yf he be ygnoraunt in the
fyrste prynceples. Also all byrdes/fowles/
wylde beestes as beestes of forestes & war/
ren and suche other be exceptyd by the law
es of Englande out of the sayde generall
lawe and custome of propretye. For by the
lawes of the realme no propretye may be of
them in any person onles they be tame. Ne/ Not:
uertheles the eggges of hawkes/herons/or
suche other as buylde in the grounde of any
person/be adiuged by the sayd lawes to be
longe to hym that oweth the grounde.

¶ Of the seconde grounde of the lawe of Englande. The. vi. chappytre.

Tudent) The ſeconde grounde of the lawe of Englande is the lawe of god/and therfore for punyſſhement of them that offend agaynſt the lawe of god/it is enquerȳd in many courtes in this realme/yf any holde any oppynyons ſecretely or in any other maner agaynſt the trewe catholycall fayth. And alſo yf any generall cuſtome were directlye agaynſt the lawe of god/or yf any ſtatute were made directly agaynſt it/as yf it were ordayned that noo almeſſe ſhuld be gyuen for no neceſſytie that cuſtome and ſtatute were voyde. Neuertheleſſe the ſtatute made in the.xviii. yere of kynge Edward the thyrde/wherby it is ordayned that no man vnder payne of Imprysonement ſhall gyue any almeſſe to any valyaunt beggers that may well laboure/that they may ſo be cōpellyd to laboure for theyr lyuynge is a good ſtatute/for it obſcuryth the intent of the lawe of god. And alſo by auctoryte of this lawe there is a grounde in the lawes of Englande/that he that is accurſed ſhall maynteyne no accyon in the

kynges courte except it be in very fewe cases so that the same excõmunycacyon be certyfyed byfore the kynges Justyces in suche maner as the lawe of the realme hath appoynted. And by the auctorytie also of this grounde / the lawe of Englande amytteth the spyrytuell Jurisdyccyon of dysmes and offerynges. And of all other thynges that of right bylonge vnto it. And receyueth also all lawes of the Churche dewely made and that excede not the power of them that made them / In so moche that in many cases it behouyth the kynges Justyces to Juge after the lawes of the churche. ¶ Doctour) Howe may that be that the kynges Justyces shuld Juge in the kynges courtes after the lawe of the Churche / for it semyth that the churche shuld rather gyue Jugement in suche thynges as it may make lawes of: then the kynges Justyces. ¶ Student) That may be done in many cases / Wherof I shall for an exãple put this case. If a Wryt of ryght of warde be broughte of the bodye &c. And the tenaunt confessynge the tenour and the nonage of the Infant / sayth yᵗ the infante was maryed in his aũcesters dayes &c. Wher upon .xii. men be sworne whiche gyue this

verdyt / that the Infante was maryed in the lyfe of his auncestē. And that the Woman in the lyfe of his Auncestē sued a deuorce wherupon sentence was gyuen that they shulde be deuorcyd / And that the heyre appelyd whiche hangyth yet vndyscussyd prayenge the ayde of the Justyce to knowe whether the Infante i this case shalbe sayd maryed or not / In this case yf the lawe of the Churche be that the sayd sentence of deuorce standeth in his strengthe & vertue vntyll it be adnullyd vpon the sayde appele. Than the Infante at the deth of his auncestēr was vnmaryed bycause the fyrste maryage was adnullyd by that deuorce. And yf the lawe of the Churche be that the sentence of that deuorce standeth not in effecte tyll it be affermyd vpon the sayde appele / then is the Infante yet maryed / so that the value of his maryage can not belonge vnto the lorde. And therfore in this case Jugement condycyonell shall be gyuen &c. And in lyke wyse the kynges Justyce in many other cases shall Juge after the lawe of the Churche lyke as the spyrytuel Juges must in many cases forme theyr Jugement after the kynges lawes. ¶ Doctoure) Howe may

that be that the ſpyrytuell Juges ſhuld Ju
ge after the kynges laWes / I pray the ſhe/
We me ſome certayn eaſe therof. ¶ Studēt
Though it be ſomWhat a dygreſſion fro o²
fyrſt purpoſe/yet I Wyll not With ſaye thy
deſyre/but Wyll With good Wyll put the a
eaſe or tWo therof / that thou mayſt the bet/
ter perceyue What I meane / yf A.and B.
haue goodes Joyntly / and A.by his laſte
Wyll byquetheth his porcyon therin to C.
And maketh the ſayde B.his executour e
dyeth / and C. aſkyth the execucyon of this
Wyll in the ſpyrytuell courte / In this caſe
the Juges there be boūde to Juge that Wyl
to be Voyde:bycauſe it is Voyde by the laW
es of the realme.And in lyke Wyſe yf a mā
be outlaWed/and after by his Wyll byque/
theth certayn goodes to Johñ at ſtyle/ and
make his executours and dye / the kynge
ſeaſyth the goodes and after gyueth theym
agayne to the executours / and after Johñ
at ſtyle ſuyth a ſytacyon out of the ſpyrytu
ell courte agaynſt the executoures to haue
execucyon of the Wyl/in this caſe the Jugꝭ
of the ſpyrytuell courte muſt Juge the Wyl
to be Voyde as the laW of the realme is that
it is. And yet there is no ſuche laWe of for/

feyture of goodes by outlagarye in the spy
rytuell lawe.

¶ Of the thyrde grounde of the lawe of Englande. The. vii. chapytre.

STudent) The thyrde groun
de of the lawe of Englande
standeth vpon dyuerse gen
rall Customes of olde tyme
vsed through all the realme
which haue ben acceptyd and approuyd by
our soueraygne lorde the kynge and his pro
genytours and all theyr subgettes. And by
cause the sayd customes be neyther agaynst
the lawe of god / nor the lawe of reason / t
haue ben alwaye taken to be good and ne
cessarye for the cõmon welth of all the real
me. Therfore they haue optayned the stren
gthe of a lawe / in so moche that he that doth
agaynst them doth agaynst Justyce. And
these be tho customes that properly be calle
the cõmon lawe. And it shall alway be de
termyned by the Justyces whether there be
any suche generall custome or not / and not
by. vii. men. And of these general customes
and of certayne pryncyples that be called

maxymes whiche also take effecte by the ol
de custome of the realme/as shall appere in
the chapytre nexte folowynge dependyth
moste parte of the law of this realme. And
therfore our soueraygne lorde the Kynge at
his Coronacyon amonge other thynges ta-
kyth a solempne othe/that he shal cause all
the customes of his realme faythfully to be
obseruyd. ¶ Doctour) I pray the shewe me
some of these generall customes. ¶ Studēt
I wyll with good wyll and fyrste I shall
shewe the how the custome of the realme is
the verye grounde of dyuers courtes in the
realme/that is to say of the Chauncerye of
the kynges Benche of the cōmon place: and
the Escheker/the whiche be courtes of recor
de bycause none may syt as Juge ī tho cour
tes but by the kynges letters patentes. And
these courtz haue dyuers auctorytes wherof
it is not to treate at this tyme. Other courtz
there be also only groundyd by the custome
of the realme: that be of moche lesse auctory
ne then the courtz byfore rehercyd/as in euer-
y shyre within the realme there is a courte
that is called the Coūtye/and another that
is called the Shyryffes torne/and in euery
maner is a courte that is called a courte ba-

ron. And to euery fayre and market is inc
dent a courte that is called a courte of Py
powdres. And thoughe in some statutes i
made mēcyon somtyme of the sayd courtes
yet neuertheles of the fyrste Institucion o
the sayd courtes: and that suche courtes shu
be be/there is no statute nor lawe Wrytty
in the lawes of Englande. And so all th
grounde and begynnynge of the sayd cou
tes depende vpon the custome of the realm
the Whiche custome is of so hygh auctorytie
that the sayde courtes ne theyr auctorytie
may not be alteryd/ne theyr names chaun
ged Without Parlyament.

¶ Also by the olde custome of the realme
no man shall be taken inprysonyd dysse
syd nor other Wyse destroyed / but he be pu
to answere by the lawe of the lande: & thi
custome is cōfermyd by the statute of Ma
na carta the.xxix.chappytre.

¶ Also by the olde custome of the realme
men great and small shall do and recey
Justyce in the kynges courtes/and this c
stome is confermyd by the statute of Ma
brygge the fyrste chappytre.

¶ Also by the olde custome of the realme
the eldest sone is only heyre to his auncest

and yf there be no ſones but doughters: then al the doughters ſhalbe heyre: and ſo it is of ſuſters and other kynneſwomen. And yf there be nother ſone/ doughter/ brother/ nor ſuſter/ then ſhall the enheryteaunce dyſcende to the nexte kynneſman or kynneſwoman of the hole blode to hym that had the enhyꝛ taũce of how many degrees ſo euer they be from hym. And yf there be no heyre generall nor ſpecyall/ then the lande ſhall eſchete to the Lorde of whom the lande is holden.

¶ Alſo by the olde cuſtome of the realme/ landes ſhall neuer aſcende/ nor dyſcende from the ſone to the father or mother/ nor to any other auncеſtre in the ryght lyne/ but it ſhall rather eſchete to the lorde of the fee.

¶ Alſo yf an alyen haue a ſone that is an alyen and after is made Denyzyn/ and hath another ſone/ and after purchaſyth lãdes and dyeth/ the yonger ſone ſhall enheryte as heyre/ and not the eldeſt.

¶ Alſo yf there be thre bretherne (the myddeſt brother purchaſe lãdes (dyeth without heyre of his body the eldeſt brother ſhal inheryt as heyre to hym: (not the yõger brother.

¶ Alſo yf lande in fe ſymple dyſcende to a man by the pte of his father (he dyeth with

out heyre of his body / then that inherytaun
ce shall dyscende to the next heyre of the par
te of his father. And yf there be no suche hey
re of the parte of his father / then yf the fa
ther purchasyd the landes it shall go to the
next heyre of the fathers mother and not to
the nexte heyres of the sones mother / but it
shall rather eschete to the lo:de of the fee: but
yf a man purchase lãdes to hym and to his
heyres & dye without heyre of his body as
is sayd byfore / then that lande shall dyscen
de to the next heyre of the parte of his fath
yf there be any / and yf not then to the next
heyre of the parte of his mother.

¶ Also yf the sone purchaseth landes in fee
and dye without heyre of his body / the lan
de shall dyscende to his vncle and shal not
ascende to his father / but yf the father haue
a sone thoughe it be many yeres after the
deth of the elder brother / yet that sone shall
put out his vncle and shall enioy the lan
de as heyre to his elder brother forever.

¶ Also by the custom of the realme the chyl
de that is borne byfore spousells is bastar
de and shall not inheryte.

¶ Also the custome of the realme is that no
maner of goodes nor catelles reall nor par

sonell shall neuer go to the heyre/but to the executoures/or to the ordynarye or admynystratoures.

¶ Also the husbonde shall haue all the chatellys parsonellys that his wyfe had at the tyme of the spousellys or after: and also chatellys reall yf he ouer lyue his wyfe/but yf he sell or gyue a way the chatellys reallys & dye by yt sale or gyfte the intereste of the wyfe is determyned/& els they shal remayne to the wyfe yf she ouer lyue her husbonde.

¶ Also the husbonde shall haue all the inherytaunce of his wyfe wherof he was seased in dede in the ryght of his wyfe duryng the spousellys in fee or in fee tayle generall/for rme of his lyfe/ yf he haue any chyld by her to holde as tenaunt by the curtesye of Englande/& the wyfe shall haue the thyrde parte of the inherytaunce of her husbonde wher of he was seasyd in dede or in law after the spousellz &c. but in that case the wyfe at the deth of her husbōde must be of the age of.ix. yere or aboue/or els she shall haue no dowrye. ¶ Doctoure.) What yf the husbonde at his deth be within the age of.ix.yere. ¶ Studēt) I suppose she shal yet haue her dower.

¶ Also the olde Lawe & custome of the re-

alme is that after the deth of euery tenaũte that holdeth his landes by knyghtes seruyce the lorde shall haue the Warde and maryage of the heyre tyll the heyre come to the age of.xxi.yere. And yf the heyre in that case be of full age at the deth of his auncestre / then he shall paye to his lorde his relyef Whiche at the cõmon la We Was not certayne / but by the statute of Magna carta / it is put in certayn: yt is to say for euery hole knyghtes fee to paye a.C.shyllynges. And for a hole baronye to pay a hondred marke for relyef. And for a hole erledom to pay a.C.pounde and so after the rate. And yf the heyre of suche a tenaunte be a Woman / and she at the dethe of her auncestre be Within the age of. viii. yeres / then by the cõmon la We she shulde haue ben in Warde oonly tyll.xiiii.yere / but by the statute of Westm the fyrste in suche case she shal be in Warde tyll.xxi.yere. And yf at the deth of her auncestre she be of the age of.xiii.yere or aboue / she shalbe out of Warde / though the lãdes be holden of the kynge. And then she shall pay relyef as an heyre male shall.

¶ Also of landes holden in socage yf the auncestre dye / his heyre beynge Within the

ge of.xiiii.yeres/the nexte frende of the hey
e to whom the inherytaunce may not dyſ
ende ſhal haue the warde of his body & lan
des tyll he ſhall come to the age of.xiiii.ye
re/& then he may entre. And when the heyre
cometh to the age of.xxi.yere/then the gar
deyn ſhall yelde hym accompte for the pro
fittes therof by hym receyued.

¶ Alſo ſuche an heyre in ſocage for his re
lyef ſhall double his rent to the lorde the ye
re folo wynge the dethe of his auncestre/as
of his aūcestre helde by.xii.d.rent/the heyre
in the yere folo wynge ſhall pay that.xii.d.
for his rent/& other.xii.d. for his relyef. And
that relyef he muſt pay thoughe he be within
age at the deth of his auncestre.

¶ Alſo there is an olde lawe and cuſtome
in this realme that a freholde by way of ſef
fement gyfte or leaſe paſſyth not without
lyuerey of ſeaſon be made vpon the lāde ac
cordynge thoughe a dede of feffemēt be ther
of made & delyuered: but by way of ſurren
dre partycion and eſchaunge a freholde may
paſſe without lyuerey.

¶ Alſo yf a mā make a wylle of land whet
of he is ſeaſyd in his demeſne as of fee/that
wylle is voyde/but yf it had ſtande in feffes

Note

handes it had ben good. And also in lōdon
suche a wyll is good by the custome of the
cytie yf it be inrowlyd.

¶ Also a lease for terme of yerꝫ is but a chat-
tell in the law / & therfore it may passe with-
out any lyuerey of season / but otherwyse it
is of a state for terme of lyfe for that is a fre-
holde in the law / & therfore lyuerey must be
made therof or els the frehold passyth not.

¶ Also by the old custome of the Realme a
man maye dystreyne for a rent seruyce of ca-
mon ryght. And also for a rent reseruyd vp-
pon a gyfte in tayle / a lease terme of lyfe / of
yeres and at wyll / and in suche case the lor-
de may dystreyne the tenauntes beestes as
soon as they come vpon the groūde / but the
beestes of straūgers that com in but by ma-
ner of an escape / he may not dystreyne tyll
they haue ben leuant & couchant vpon the
grounde: but for dette vpon an oblygacion
nor vpon a contracte / nor for accompte nor
yet for areragꝫ of accompte / nor for no ma-
ner of trespasse / reperaciōs / nor suche other
no man may dystreyne.

¶ Also by the olde law & custome of the re-
alme al yssues that shalbe ioyned be twyp-
te partie and partie in any courte of record

Bithin the Realme excepte a fewe Wherof
e nedith not to treate at this tyme/muste be
yed by.xii. fre & la Wful men of the Vysne
hat be not of affynytie to none of the par-
yes. And in other courtz that be not of recor
e/as in the countye/courte baron/hundred
e suche other lyke / they shalbe tryed by the
the of the partyes & not other Wyse oonles
he partyes assent that it shalbe tryed by the
omage. And it is to be notyd that lordes/
arons/and all pyers of the realme be exse
pted out of suche tryalles yf they Wyll/but
f they Wyll Wylfully be sWorne therin/
ome say it is no errour. And they may yf
hey Wyll haue a Wrytte out of the Chaun
cerye dyrectyd to the Shyryf cōmaundyng
hym that he shall not impanell them Upon
no enquest. And of this that is sayd byfore
it apperyth that the customes aforesayd nor
other lyke Unto them/Wherof be Very ma-
ny in the laWes of Englād can not be pro
uyd to haue the strength of a laWe only by
reason: for hoW may it be prouyd by reason
that the eldest sone shall onlye enheryte his
father & the yonger to haue no parte/or that
the husbonde shall haue the hole lande for
terme of his lyfe as tenaunt by the curtesye

ty ſuche maner as byfore appertyth. And
that the wyfe ſhal haue only the thyrde pa
te ty the name of her dower / & that the hu
bonde ſhal haue all the goodes of his wy
as his owne. And that yf he dye leuyng
the wyfe / that his executours ſhal haue t
goodes / and not the wyfe. All theſe an
ſuche other can not be prouyd oonly by re
ſon that it ſhuld be ſo and no other wyſe
though they be reaſonable / & that with t
cuſtome therin vſed ſuffyſeth in the la we.
And a ſtatute made agaynſt ſuche genera
cuſtomes ought to be obſeruid bycauſe th
be not merely the la we of reaſon.

¶ Alſo the la we of ypretye is not the la
of reaſon / but a la we of cuſtome how be
that it is kept / and is alſo ryght neceſſary
to be kept in all realmes & amonge all peo
ple. And ſo it may be nombred amonge t
generall cuſtomes of the realme. And it
to vnderſtande that there is no ſtatute th
treatyth of the begynnyng of the ſayd cuſ
mes: ne why they ſhuld be holden for la w
And therfore after theym that be lernyd i
the la wes of the realme: the olde cuſtome o
the realme is the only and ſuffycyent auct
rytie to them in that behalfe. And I pray

the ſhewe me what doctours holde therin/ that is to ſaye whether a cuſtome oonly be ſuffycyent auctorytie of any lawe. ¶ Doctour) doctours holde that a lawe groũdyd vpon a cuſtome is the moſte ſueryſt lawe/ but this muſt be alwayes vnderſtãde ther/ with that ſuche a cuſtome is nother contrarye to the lawe of reaſon/ nor to the law of god. And nowe I praye the ſhewe me ſom what of the maxymes of the lawe of Englande wherof thou haſte made mencyon/ by fore in the.iiii.chappytre. ¶ Student) I wyl with good wyll.

¶ Of the.iiii.grounde of the lawe of Englande. The.viii.chappytre.

Student) the.iiii.groũde of the lawe of Englãde ſtandyth in dyuers prynccyples that be called in the lawe maxymes/ the which haue ben alwayes taken for lawe in this realme/ ſo that it is not lawfull for none that is lernyd to denye them/ for euery one of thoſe maxymes is ſuffycyent auctorytie

to hym selfe. And whiche is a maxyme / & whiche not shall alway be determyned by the Juges / and not by .xii. men. And it nedyth not to assygne any reason why they were fyrste receyued for maxymes for it sufficyseth that they be not agayn̄st the lawe of reason nor the lawe of god / & that they haue alway be taken for lawe. And suche maxymes be not onlye holden for lawe / but also other cases lyke vnto them / and all thyngs that necessaryly folowyth vpon the same / or to be reduced to lyke lawe. And therfore moste cōmenly there be assygned some reasons or cōsyderacyon why suche maxymes be resonable to the intent that other cases lyke may the more conuenyently be applyed to them. And they be of the same strength & effect in the lawe as statutes be. And though the generall custome of the Realme be the strength and warraunte of the sayd maxymes: as they be of the gnrall customes of the realme / yet bycause the sayd generall customes be in maner known throughe the realme as well to them that be vnlernyd as lernyd / and may lyghtly be had and knowen and that with lytell stodye. And the sayde maxymes be onlye known in the kynges

courtes or amonge them that take great stu
dye in the lawe of the realme/and amonge
fewe other persones. Therfore they be set in
this wrytynge for seuerall groũdes and he
that lysteth may so accompte them/ or yf he
wyll he may take them for one grounde af=
ter his pleasure/of which maxymes I shal
hereafter shewe the parte.
¶ Fyrste there is a maxyme that Escuage
Uncertayne maketh knyghtes seruyce.
¶ Also there is another maxyme that Es=
cuage certayne maketh socage.
¶ Also that he that holdeth by castell gar=
de/holdeth by knyghtes seruyce/but he hol=
deth not by escuage / And that he that hol=
deth by.xv.shyllynges to the garde of a cas=
stell holdeth by socage.
¶ Also there is a maxyme that adyscent ta
keth awaye an entre.
¶ Also that no prescrypcyon in landes ma
keth a ryght.
¶ Also that a prescrypcyon of rent & of pro
fytes aprendre out of lãde maketh a ryght.
¶ Also that the lymytacyon of a prescryp=
cyon generally taken is from the tyme that
no mãnes mynde renuyeth to the contrarye.
¶ Also that assygnes may be made Upon

landes gyuen in fee for terme of lyfe / or for terme of yeres though no mencyon be made of assygnes / & the same la we es is of a rent that is grauntyd / but other wyse it is of a warantye and of a couenaunte.

¶ Also that a condycyon to auoyde a fre-holde can not be pleadyd without dede / but to auoyde a gyft of a chatell it may be pleadyd without dede.

¶ Also that a release or a cõfyrmacyon made by hym that at the tyme of the release or confyrmacyon made had no ryght is voyde in the la we / though a right come to hym after except it be with warantye / and then it shall barre hym of all ryght that he shall haue after the warantye made.

¶ Also that a ryght or tytle of accyon that only dependyth in accyon can not be gyuen nor grauted to none other but only to the tenaũt of the groũde / or to hym that hath the reuercyon or remaynder of the same lande.

¶ Also that in an accyon of dette vpon a contracte the deff' maye wage his la we / but other wyse it is vpon a lease of landes for terme of yeres or at wyll.

¶ Also that yf an evigent i case of felonye be awardyd agaynst a man: he hath therby

forthwith forfetyd his goodes to the kyng.
¶ Also yf the sone be atteyntyd in the lyse of the father / and after he purchaseth his chartoure of Pardon of the kynge / and after the father dyeth / In this case the lande shall eschete to the lorde of the fee in so moche that thoughe he haue a yonger brother / yet the lande shall not dyscende to hym / for by the atteyndre of the elder brother the blod is corrupte and the father in the lawe dyeth without heyre.
¶ Also yf an abbot or a pryour alyene the landes of his house and dyeth / in that case though his successour haue right to the lāde yet he may not entre: but he must take his accyon that is appoynted hym by the lawe.
¶ Also there is a maxyme in the lawe that yf a vyllayne purchase landes and the lorde entre / he shall enioye the lande as his owne / but yf the vyllayne alyene byfore the lorde entre / that alyenacyon is good / And the same lawe is of goodes.
¶ Also yf a man stele goodes to the value of .xii. d. or aboue it is felonye / and he shall dye for it / And yf it be vnder the value of .xii. d. then it is but petyt larcynye & he shall not dye for it / but shalbe otherwyse punys-
felonye

ſhed after the dyſcrecyon of the Juges ex-
cept it be taken fro the perſon/ for yf a man
take any thynge how lytell ſoeuer it be/
from a mānes perſone felonouſly/it is cal-
led robetye and he ſhall dye for it.

¶ Alſo he that is areynyd vpon an Indy-
tement of felynye ſhall be admyttyd in fa-
uoure of lyfe to chalenge.xxxv. Jurrours
peremtorylye/ but yf he chalenge any abou
that nombre/ the law taketh hym as won
that hath refuſed the law bycauſe he hath
refuſed thre hole enqueſtes/ and therfore he
ſhall dye: but with cauſe he may chalēge as
many as he hath cauſe of chalenge to. And
further it is to be vnderſtād that ſuche pe
emtorye chalēge ſhal not be admyttedin ap
prale bycauſe it is at the ſuyte of the partie.

¶ Alſo the lande of euery mā is in the law
encloſed from other though it lye in the open
felde. And therfore yf a man do a treſpaſſe
therin the wryt ſhalbe quare clauſū fregit.

¶ Alſo that rentes/ cōmons of paſture of
turbary reuercyons remaynders/ nor ſuche
other thyngs whiche lye not in manuell oc-
cupacyon maye not be gyuen nor graunted
to none other without wrytynge.

¶ Alſo that he that recouereth dette or da-

mages in the kynges courte by ſuche an ac/
cyon wherin a Capias laye in the proceſſe
may within a yere after the recouerye haue
a Capias ad ſatiſſaciendum to take the bo
dye of the defendaunt and to cõmyt hym to
pryſon tyll he haue payde the dette and da/
mages / but yf there laye no Capias in the
fyrſte accyon / then the playntyfe ſhall haue
no Capias ad ſatiſſaciendum / but muſt ta
ke a fierifacias or an elegit within the yere:
or a ſcire facias after the yere or within the
yere yf he wyll.

¶ Alſo yf a releaſe or confyrmacyon be ma
de to hym: that at the tyme of the releaſe ma
de had no thynge in the lande. ꝛc. the releaſe
or confyrmacyon is voyde except certayne
caſes as to a vouchye ꝛ certayne other whi
che nede not here to be remembred.

¶ Alſo there is a mayme in the lawe of Engla
nde that the kynge may dyſſeaſe no man / ne that no man may dyſſeaſe the kyn
ge / ne pull any reuercyon or remayndre out
of hym.

¶ Alſo the kynges excellencye is ſo hyghe in the lawe that no freholde may be gyuen to the kynge ne be deryuyed from hym / but by mater of recorde.

¶ Also there was somtyme a maxyme & a lawe in englande that no man shulde haue a wryt of ryght: but by specyall suyte to the kynge. And for a fyne to be made in the Chaũcery for it / but tho maxymes be chaũged by the statute of magna carta the .xvi. chapyt. Where it is sayd thus. Nulli negabimꝰ nulli vẽdemꝰ rectũ vel iusticiam. And by the sayd wordes nulli negabimꝰ / a man shall haue a wryt of ryght of course in the Chauncerye without suynge to the kynge for it. And by the wordes nulli vendemus he shall haue it without fyne. And so many tymes the olde maxymes of the lawe be chaunged by statutes.

¶ Also thoughe it be resonable that for the manyfolde dyuersyties of accyons that be in the lawes of Englande / that there shuld be dyuersyties of processe as in the reale accyons after one maner / and in personall accyons after another maner: yet it can not be prouyd merely by reason that the same processe ought to be had and none other / for by statute it might be alteryd. And so the grounde of the sayd processes is to be referryd onely to the maxymes and customes of the realmes. And I haue shewyd the these max

ynes byfore rehercyd / not to the intent to
ſhewe the ſpecyally What is the cauſe of the
lawe in them / for that Wolde aſke a great
reſpyte / but I haue ſhewyd them onlye to
the intent that thou mayſt perceyue that the
ſayde mayymes and other lyke may conue
nyently be ſette for one of the groundes of
the lawes of Englande / moreouer there be
dyuers caſes / Wherof I am in doute Whe-
ther they be onlye mayymes of the lawe or
that they be groundyd vpon the lawe of
reaſon / Wherin I praye the let me here thy
ne opynyon. (Doctoure) I pray the ſhewe
thoſe caſes that thou meaneſt: & I ſhall ma
ke the anſwere therin as I ſhall ſe cauſe.

Thereafter folowyeth dyuers caſes Wherin
the Student doutyth Whether they be
onlye mayymes of the lawe / or that
they be groundyd vpon the lawe
of reaſon. The. iv. chapytre.

STudent) the lawe of englande is that yf a man cõmaunde another to do a treſpaſſe & he doth it / that the cõmaunder is a treſpaſſer. And I am in doute whether that be only by a may-

yme of the lawe/or that it be by the lawe of reason.

¶ Also I am in doute vpon what lawe it is groundyd that the Accessory shall not be put to answere byfore the pryncypall &c.

¶ Also the lawe is that yf an Abbot bye a thynge that cōmyth to the vse of the howse and dyeth that his successours shall be charegyd / and I am somwhat in doute vpon what grounde that lawe dependyth.

¶ Also that he that hath possessyon of lāde though it be by dissesō hath ryght agaynst all men / but agaynst hym that hath ryght.

¶ Also that yf any accyon reall be suyd agaynst any man that hath nothynge in the thynge demaundyd the wryt shal abate/ as at the cōmon lawe.

¶ Also that the alyenacyon of the tenaunt hangynge the wryt nor his entre in to relyegyon / or yf he be made a knyghte / or yf she be a woman and take an husbōde hangynge the wryt / that the wryt shall not abate.

¶ Also yf lande and rente that is goynge out of the same lande come in to one mannes hande of lyke estate and lyke suertye of tytle / the rent is extyncte.

¶ Also yf lande dyscende to hym that hath

tyght to the same lande byfore / he shall be remytted to his better tytle yf he wyll.
¶ Also yf two tytles be concurrant togy-ther / the eldest tytle shall be preferryd.
¶ Also that euery man is bounde to make recompence for suche hurte as his beest-s shal do in the corne or grasse of his neyghboure though he know not that they were there.
¶ Also yf the demaundaunt or playntyffe hangynge his writte wyll entre in to the thynge demaundyd his writ shall abate.
And it is many tymes very harde and of great dyffyculte to knowe what cases of the lawe of Englande be groundyd vpon the lawe of reason / and what vpon custo-me of the realme / and though it be harde to dyscusse it: yet it is very necessary to be kno wen for the knowleg of the parfyte reason of the lawe / and yf any man thynke that these cases byfore rehercyd be groũdyd vpõ the lawe of reason / then he may referre them to the fyrste grounde of the lawe of Englã de whiche is the lawe of reason / wherof is made mencyon in the. v. chapytre. And yf any man thynke that they be groũdyd vpõ the lawe of custome / then he maye referre them to the maxymes of the lawe / whiche

be assygned for the thyrde grounde of the lawe of Englãde/ Wherof mencyon is made in the. viii. chappytre as byfore apperyth. ¶ Doctoure) but I praye the shewe me by what auctorytie is it prouyd in the lawes of Englande that the cases that thou haste put byfore in the. viii. chappytre / and suche other whiche thou calleste maxymes ought not to be denyed / but ought to be taken as maxymes / for sythe they can not be prouyd by reason as thou agreest thy selfe they can not / they maye as lyghtly be denyed as affermyd onles there be some suffycyent auctorytie to approue them. ¶ Student) many of the customes & maxymes of the lawes of Englande be knowen by the vse and custome of the realme so apparantly that it nedeth not to haue any lawe wrytten therof / for what nedyth it to haue any lawe wrytten that the eldeste sone shall enheryte his father / or that all the doughters shall enheryte togyther as one heyre / yf there be no sone / or that the husbonde shall haue the goodes and chatellys of his wyfe that she hath at the tyme of the sponsellys or after / or that a bastarde shall not enherite as heyre / or that executours shall haue the dispos-

yon of all the goodes of theyr testatoure:
nd yf there be no executours that the ordy-
arye shall haue it / and that the heyre shall
ot medle with the goodes of his auncestre:
ut any partyculer custom helpe hym. The
ther maxymes and customes of the lawe
hat be not so openly knowen amonge the
eople may be knowen partly by the lawe
f reason: & partly by the bokes of the lawe
f Englande called yeres of termes / & part
y by dyuers records remaynynge i the kyn-
es courtes & in his tresorye. And specyally
y a boke that is called the regestre / & also
y dyuers statutz wherin many of the sayd
ustomes and maxymes be ofte resyted / as
a dylygēt sercher wyll euydētly appere.

¶ Of the. v. grounde of the lawe of Englande. The. x. chapytre.

STudent) The. v. groūde of the lawe of Englande standyth in dyuers partyculer customes vsed in dyuers countres / townes / cyties / & lordyppes in this realme / the whiche ꝑtyculer stomes bycause they be not agaynste the

lawe of treason / nor the lawe of god / though they be agaynst the sayde generall custom or maxym of the lawe: yet neuertheles they stand in effecte and be taken for lawe / but yf it ryse in question in the kynges courte Whether there be any such ptyculer custome or not / it shalbe tryed by .xii. men / & not by the Jugge / except the same partyculer custō be of recorde in the same courte. Of which partyculer customes / I haue hereafter noted some for an ensample.

¶ Fyrste there is a custome in Kent that is called gauelkynde / that all the brethern shall enheryt togyther as susters at the cō mon lawe.

¶ Also there is another partyculer custome that is called burghengelysshe Wher the yonger sone shall enheryte byfore the eldest: and that custome is in notyngham.

¶ Also there is a custom in the cytie of London that fre men there: maye by theyr testamente introulyd byqueth theyr landes that they be seasyd of to whome they wyll / except to mortmayne. And yf they be cytyzyens and fre men / then they maye also byqueth landes to mortmayne.

¶ Also in gauelkynde though the father be

hangyd the sone shall enheryt / for theyr cu-
stome is the father to the bough / the sone to
the plough.
¶Also in some coũtres the wyfe shal haue
the halfe of the husbondes landes in the na-
me of her dowrye as lõge as she kyueth sole.
¶Also in some countre the husbonde shall
haue the halfe of the enherytaũce of his wy
fe / though he haue no yssue by her.
¶Also in some countre an infaunte when
he is of the age of.xv.yere may make a fef-
sement / & the fessement good. And in some
countre when he can mete an elle of clothe.

¶Of the sypte grounde of the lawe of Englande. The.xi.chapytre.

Tudẽt) The.vi.grou-
de of the lawe of Eng-
lãde standeth in dyuers
statutes made by our so
ueraygne lorde the kyn
ge & his progenytours /
and by the lordes spyry
tuell and temporall / and the cõmons in dy-
uers Parlyaments in suche cases where the
lawe of reason / the lawe of god / customes /

maxymes / ne other groundes of the lawe
semyd not to be suffycyēt to punysshe euyll
men / and to rewarde good men. And I re
mēbre not that I haue seen any other grou
des of the lawe of Englyde / but only these
that I haue byfore remembred. Furthermo
re it apperyth of that I haue sayde byfore
that oft tymes two or thre groundes of the
lawe of Englande muste be ioyned togy
ther / or that the playntyfe can open and de
clare his ryght / as it may appere by this ex
ample. If a man entre into another mānes
lande by force; and after maketh a feffemēt
for mayntenaūce to defraude the playntyfe
from his accyon. In this case it apperyth
that the sayd vnlaufull entre is prohybyte
by the lawe of reason / but that the playn
tyfe shall recouer treble damages that is by
reason of the statute made in the. viii. yere
of kyng Henry the. vi. the. ix. chapitre. And
that the damages shalbe seasyd by. xii. men
that is by the custome of the realme. And so
in this case thre groūdes of the lawe of En
glande mayntene the playntyffes accyon.
And so it is in dyuers other cases that nede
not to be remēbred nowe. and thus I make
an ende for this tyme / to speke any ferther

Ota. for
orribl
ntat into
mans
and

of the groundes of the lawe of Englande.
¶ Doctoure) I thāke the for the great payne that thou haste taken therin/neuertheles for as moche as it apperyth by yt thou haste sayd byfore that the lernyd men of the law of Englande pretende/ to veryfye that the lawe of Englande wyll no thynge do / ne attempte agaynst the lawe of reason / nor the lawe of god/ I pray the answere me to some questyons grouudyd vpon the lawe of Englande / howe as the thynketh the lawe may stande with reason or cōscyence in them. ¶ Student) put the case & I shall make answere therin as well as I can.

¶ The fyrste questyon of the Doctoure of the lawe of Englande and conscyence. The.xii.chapytre.

Doctoure) I haue hard say that yf a man that is bounde in an oblygacyon paye the money: but he taketh no acquytaunce or yf he take one & it happenyth hym to lese it/that in that case he shal be compelyd by the lawes of Englande to paye the

money agayne/and howe maye it be sayde then / that that lawe standeth with reason or conscyence / for as it is groundyd vpon the law of reason that dettes ought of right to be payde/so it is groūdyd vpon the law of reason(as me semyth)that when they be payde that he that payeth them shuld be dyschargyd. ¶ Student) Fyrste thou must vnderstande that it is not the lawe of Englāde/ that yf a man that is bounde in an oblygacyon pay the money without acquytaunce/or yf he take acquytaūce and lese it:that therfore the law determyneth that he ought of ryght to paye the money efte sones / for that lawe were bothe agaynste reason & cōseyence / but trougth it is that there is a generall maxyme in the lawe of Englande/ that in an accyon of dette sued vpon an oblygacyon / the defendaunte shall not plede that he oweth not the money / ne can in no wyse dyscharge hym selfe in that accyon/ but he haue acquytaunce or some other wrytynge suffycyent in the lawe or some other thynge lyke/wytnessyng that he hathe payde the money / and that is ordayned by the law to auoyde a great inconuenyence that els myght happen to come to many people

that is to say that euery man by a nude pa-
roll and by a bare auerment shulde auoyde
an oblygacyon / Wherfore to auoyde that in
conuenyence the lawe hathe ordayned that
as the defendaũt is charged by a sufficyent
Wrytynge / that so he must be discharged by
suffycyent Wrytyng / or by some other thyn
ge of as hygh auctorytie as the oblygacyon
is. And though it may folowe therupõ that
in some partyculer case a man by occasyon
of that generall maxyme maye be compel-
lyd to pay the money agayne that he payde
byfore / yet neuerthelesse no defaute can be
therfore assygned in the lawe. For lyke as
makers of lawes take hede to suche thyngs
as may oft fall / and do moste hurte amon-
ge the people rather then to partyculer cases
So in lykewyse the generall groundes of
the lawe of Englande / hede more What is
good for many / then What is good for one
synguler person only. And bycause it shuld
be a hurte to many yf an oblygacyon shuld
be so lyghtly auoyded by Worde. Therfore
the lawe specyally preuentyth y^t hurte Vn
der suche maner as byfore apperyth. And
yet intendyth not / nor cõmaũdyth not that
the money of ryght ought to be payde agay

ne / but settyth a generall rule / Whiche is good and necessary to all the people / & that euery man maye well kepe / without it be through his owne defaute / and yf suche defaute happen in any persone / wherby he is without remedye at the cōmon lawe: yet he maye be holpen by a sub pena / & so he maye in many other cases where conscyence seruyth for hym / that were to longe to reherce nowe. ¶ Docto²) but I pray the shewe me vnder what maner a mā may be holpē by conscyence. And whether he shal be holpen in the same courte or ī an other. ¶ Student bycause it can not be wel declaryd where a man shal be holpen by conscyence and where not / but it be fyrste knowen what conscyence is / therfore bycause it perteyneth to the moste proprelye / to treate of the nature and qualytie of conscyence / therfore I praye the that thou wylte make me some bryef declaracyon of the nature and qualytie of conscyence. And then I shall answere to thy questyon as well as I can. ¶ Docto²) I wyll with good wyll do as thou sayste / & to the intent that thou mayst the better vnderstāde that I shall saye of conscyence / I shall fyrste shewe the what sinderesis is / & then

What reason is/ and then What conscyence is. And howe these thre dyffer amōge them selfe I shall somwhat touche.

¶What sinderesis is. The.viii. Chapytre.

Doctoure) Sinderesis is a naturall power of the soule sette in the hyghest parte therof / mouynge and sterynge it to good/ & abhorrynge cuyll. And therfore sinderesis neuer synneth nor erryth. And this sinderesis our Lorde put in man to the intent that the ordre of thynges shuld be obseruyd. For after saynt Deonyse the Wysdom of god Joyneth the begynnynge of the seconde thynges to the laste of the fyrste thynges / for Aungell is of a nature to Vnderstande Without serchynge of reason: and to that nature man is Joyned by sinderesis/the Whiche sinderesis maye not holye be eptyncted neyther in man ne yet in dampned soules. But neuertheles as to the Vse and exercyse therof/it maye be lette for a tyme eyther thorughe the darkenesse of ygnoraunce / or for Vndyscrete delectacyon / or for the hardnes of obstynacye / fyrste by the darkenes of ygnoraunce sinderesis may be

lette that it ſhall not murmure agaynſt e/
uyll/ bycauſe he bylcuyth euyll to be good/
as it is in herytykes/ the Whiche When they
dye for the Wyckydnes of theyr errours by/
leue that they dye for the Verye trouth of the
faythe. And by Vndyſcrete delectacyon/
ſinderesis is ſomtyme ſo ouer layde that re/
morce or grudge of conſcyence/ for the tyme
can haue no place. For the hardnes of obſty
nacye ſinderesis is alſo let/ that it maye not
Ayre to goodnes as it is in dampned ſou/
les that be ſo obſtynate in euyll/ that they
may neuer be enclyned to good. And thou/
ghe ſinderesis may be ſayd to that poynt ex/
tyncte in dampned ſoules: yet it may not be
ſayd that it is fully extyncte to all intentes
For they alWaye murmure agaynſt the e/
uyll of the payne that they ſuffre for ſynne
And ſo it may not be ſayde that it is Vny/
uerſally/ and to all intentes/ and to all
tymes extyncte. And this ſinderesis is the
begynnynge of all thynges that may be le/
nyd by ſpeculacyon or ſtudye. And myn/
ſtreth the generall grounded a pryncyple
therof. And alſo of all thynges that are to
be done by man/ an example of ſuche thy/
ges as may be lernyd by ſpeculacyon ap/

eyth thus: sinderesis sayth that euery hole thynge is more then any one parte of the same thynge / and that is a sure grounde that neuer fayleth. And an exampple of thynges that are to be done / or not to be done: is where sinderesis sayth: no euyl is to be done: but that goodnes is to be done and folowed / & euyll to be fledde and suche other. And therfore sinderesis is called by some mē the lawe of reason / for it mynystreth the pryncyples of the lawe of reason / the whiche be in euery man by nature in that he is a reasonable creature.

¶ Of reason. The. xiiii. chapytre.

DOctoure) Whan the fyrste mā Adam was create / he receyued of god a doubble iye / that is to saye an outwarde iye / wherby he myght se bysyble thynges / and knowe his bodely enemyes and eschewe theym. And an inwarde iye / that is the iye of reason / wherby he myghte se his spyrytuell ennemyes that fyghteth agaynst his soule and beware of them. And amonge all gyftes that god gaue to man /

this gyfte of reason is the moste noblest/for therby man precellyth all beestz/and is made lyke to the dygnytie of aungellys/dyscernynge trouthe from falshede / & euyll from good. Wherfore he gothe farre from that effecte that he was made to when he taketh not hede to the trouth: or when he preferreth euyll byfore good. And therfore after Doctourz reason is that power of the soule/that dyscernyth bytwene good and euyl/and bytwene good and better comparynge the one to the other: the whiche also chewsyth vertues/louyth god/and fleeth vyces. And reason is called ryghtwyse and good/for it is conformable to the wyll of god and that is the fyrste thynge & the fyrste rewle that all thynges must be ruelyd by/and reason that is not ryghtwyse nor strayte: but yt is sayd culpable is eyther bycause she is deceyued with an errour that myght be ouercome/or els through her pryde or slouthfulnes she enqueryth not for knowleg of the trouth that ought to be enqueryd. Also reason is deuyded in to two partyes / that is to saye in to the hygher parte/and in to the lower parte. The hygher parte hedyth heuenly thynges & eternall. And reasonyth by heuenly law/

es/or by heuenly reasons what is to be don and what is not to be don. And what thynges god cōmaundeth / and what he prohybyteth. And this hygher pte of reason hathe no regarde to transytorye thynges/ or temporall thynges: but that somtyme as it were by maner of counceyll she bryngeth forthe heuenlye reasons/ to ordre well temporall thynges. The lower parte of reason workyth moste to gouerne wel temporall thynges. And she groundeth her reasons moche vpon lawes of man / and vpon reason of man/ wherby she concludyth that that is to be done/ that is honest and expedyent to the cōmon welth/ or not to be done for it is not expedyent to the cōmon welth. And so that reason wherby I knowe god & suche thynges as perteyne to god / bylongeth to the hygheste parte of reason. And that reason wherby I knowe creatures bylongyth to the lower parte of reason. And though these two partes / that is to say the hygher parte & the lower parte be won in dede & essence/ yet they dyffer by reason of theyr workyng and of theyr offyce as it is of one selfe iye: that somtyme lokyth vpwarde / and somtyme downewarde.

¶ Of conscyence. The.xv.chapytre.

Doctoure) This worde cōscyence / whiche in laten is called conscientia is compowned of this preposicion: cum / that is to say in englysshe: with / and with this nowne scientia / that is to saye in englysshe knowlege / and so conscyence is as moche to say as a knowlege of one thynge with another thynge / and conscyence so taken is no thynge els / but an applyenge of any scyence or knowlege to some partyculer acte of man. And so cōscyence may somtyme erre / and somtyme not erre. And of cōscyence thus taken Doctoures make many dyscrypcyons / wherof one doctoure saythe that conscyence is the lawe of oure understandynge. Another that conscyence is an habyte of the mynde dyscernynge byt wyxt good and euyll. Another that conscyence is the Jugement of reason Jugynge on the partyculer actes of man / all whiche sayenges agre in one effecte / that is to saye that conscyence is an actuell applyenge of any cunnynge or knowlege to such thynges as

be done/Wherupon it foloweth that vpon the moste parfyte knowlege of any law or cunnynge. And of the moste parfyte and most true applyeng of the same/to any ꝑty culer acte of man: foloweth the most ꝑfyte the most pure and the moste beste cõscyence And yf therebe defaute ĩ knowynge of the trouth of suche a lawe/ or in the applyenge of the same to any partyculer acte then ther upon foloweth an errour/ or defaute in cõ-scyence/as it may appere by this example/ Sideresis mynysteryth a vnyuersall pryn ciple that neuer erryth/that is to say that an vnlawfull thynge is not to be done. And then it might be taken by some mã that eue rye othe is vnlawfull bycause oure Lorde sayth Math. v. ye shall in no wyse swere. And yet he that by reason of the sayd wor-des wyl hold that it is not lawful in no ca se to swere/erryth in couscyence/for he hath not the parfyte knowlege and vnderstan-dynge of the trouth of the sayd gospell/ nor he reduceth not that sayenge of scrypture/ to other scryptures/ in whiche it is graũted that in some case an othe may be lawfull/ & the cause why conscyence maye so erre in the sayd case & in other lyke/is bycause con-

ſcyence is formed of a certayne partyculer propoſycyon or queſtyon grounded vpon vnyuerſall rewles ordayned for ſuch thyngꝭ as are to be done. And bycauſe a partyculer propoſycyon is not knowen of hym ſelfe / but muſte appere and be ſerchyd by a dylygent ſerche of reaſon / therfore in that ſerche and in the cõſcyence that ſhuld be formed therupon may happen to be errour / & therupon it is ſayde that there is errour in conſcyence / Whiche errour cõmeth eyther by cauſe he dothe not aſſent to that he ought to aſſent vnto / or elꝭ bycauſe his reaſon whereby he dothe referre one thynge to another is dyſceyued / for further declaracyon wherof it is to vnderſtande that errour in conſcyence cõmeth. vii. maner of wayes. Fyrſte is throughe ygnoraunce / and that is when a man knoweth not what he ought to do / & what he ought not to do. And then he ought to aſke counceyll of them that he thynketh moſte expert in that ſcyence whereupon his doute ryſeth. And yf he can haue no counceyl / then he muſte holly cõmyt hym to god And he of his goodnes wyll ſo ordre hym / that he wyll ſaue hym from offence. The ſeconde is throughe neclygẽce / as when a mã

s neclygent to serche his owne conscyence/
r to enquere the trouth of other. The thyrde
s through pryde as when he wyll not me-
yn hym selfe ne byleue them that be better
wyser then he is. The fourth is throughe
yngularytie as when a man foloweth his
owne wyt/ & wyll not conferme hym selfe
other/nor folowe the good cōmon way-
s of good men. The fyfte is through an in
rdynat affeccyon to hym selfe / wherby he
maketh cōscyence to folowe his desyre/ & so
e causyth her to go out of her ryght course.
The syxt is through pusillanymyte wher-
y some persone dredyth. ofte tymes suche
hynges as of reason he ought not to drede.
The. seuynth is through perplexitie/ & that
s when a man byleueth hym selfe to be so
t bytwyxt two syñes that he thynketh it
npossyble/but yt he shal fall ī to the one/
ut a mā can neuer be so proplexyd in dede
ut through an errour in conscyence: and yf
e wyll put a way that errour he shall be de
ueryd. Therfore I praye the that thou
ylte alwayes haue a good cōscyence and
f thou haue so/ thou shalt alwayes be me-
/and yf thyne owne herte reproue the not
ou shalte alwayes haue inwarde peace.

The gladnes of ryght wyse men is of go
and in god / and theyr Joye is alwayes
trouth and goodnes. There be many dy
syties of conscyence / but there is none bet
then that / wherby a mā trewely knowe
hym selfe / many men knowe many grea
hygh cūnyng thyngꝫ: ⁊ yet know not the
self and trewely he that knoweth not hy
selfe knoweth no thyng well. Also he ha
a good and a clene conscyence / that hath
rytie and clennes in his herte / trouth in h
worde / ⁊ right wysenes in his dede. And
a lyght is sette in a lanterne that all tha
in the house may be seen therby / so almy
ty god hathe sette conscyence in the mydd
of euery resonable soule as a lyght wher
he may dyscerne and know what he oug
to do: and what he ought not to do. Ther
re for as moche as it behouyth the to be oc
pyed in such thyngꝫ as parteyne to the la
It is necessarye that thou euer holde a p
and a clene conscyence specyallye in su
thyngꝫ as concerne restytucyon for the sy
is not forgyuen: but the thynge y' is wro
fullye taken be restoryd. And I counce
the also that thou loue that is good / ⁊ fl
that is euyl / and that thou do to another

hou woldest shuld be done to the and that
hou do no thynge to other that thou wol-
est not shuld be done to the. That thou do
o thynge agaynst trouthe, that thou lyue
easeablye with thy neyghboure, and that
hou do Justyce to euery man as moche as
n the is. And also that in euery generall ru
e of the lawe, thou do obserue & kepe equy-
e, and yf thou do thus I trust the lyght of
hy lanterne, that is thy cōscyēce shal neuer
e extyncted. ¶ Student, but I praye the
hewe me what is that equytie yt thou hast
pokē of byfore: and that thou woldest that
shulde kepe. ¶ Doctoure) I wyll with
ood wyll shewe the somwhat therof.

¶ What is equytie. The.xv.chapytre.

Doctoure) Equytye is a ryght wyse:
nes that consideryth all the ptyculer
cyrcūstaūces of the dede, the whicke
lso is tēperyd with the swetnes of mercye.
And suche an equytye must alway be ob-
eruyd in euery lawe of man, and in euery
enerall rewle therof, & that knewe he wel
hat sayd thus Lawes couet to be rewlyd
y equytye. And the wyse man sayth: be not

ouer moch rygh̄t wyse for the extreme ryg
wysenes is extreme wronge/as who say
yf thou take all that the wordes of the la
gyueth the thou shalte somtyme do agayn
the lawe. And for the playner declaracy
What equytie is thou shalt vnderstāde th
syth the dedes and actes of men/for whi
lawes ben ordayned happen in dyuers m
ners infynytlye. It is not possyble to ma
any generall rewle of the lawe/but that
shall fayle in some case. And therfore m
kers of lawes take hede to suche thynges
may often come and not to euery parti
case/for they coulde not though they wo
And therfore to folowe the wordes of
lawe/ were in some case both agaynst J
stycē & the cōmon welth: wherfore in so
cases it is necessary to leue the word; of
lawe/& to folowe that reason and Justy
requyreth/& to that intent equytie is ord
ned/ that is to say to tempre and myttyg
the rygoure of the lawe. And it is called
so by some men epicaia. The whiche is
other thynge but an excepcyon of the la
of god / or of the lawe of reason / from
generall rewles of the lawe of man: wh
they by reason of theyr generalytye wo

In any partyculer case Juge agaynste the
lawe of god/or the lawe of reason/the whi
che excepcion is secretely vnderstãde in eue
ry generall rewle of euery posytyue lawe.
And so it appertyth that equytie takyth not
away the very ryght/but only that that se
myth to be ryght by the generall wordes of
the lawe/nor it is not ordayned agaynst
the cruelnes of the lawe for the lawe in such
case generallye taken is good in hym selfe/
but equytye folowyth the lawe in al party-
culer cases where ryght and Justyce requy
reth/notwythstãdynge that a generall re-
wle of the lawe be to the cõtrary/wherfore it
appertyth that yf any lawe were made by
man without any suche excepcyon expres-
syd or implyed it were manyfestly vnreso-
nable/& were not to be sufferyd/for suche
cases myght come that he that wolde obser-
ue that lawe shuld breke both the lawe of
god/and the lawe of reason. As yf a man
make auowe that he wyll neuer eate whyt-
e meate/& after it happenyth hym to come
where where he can gette none other meate.
In this case it behouyth hym to breke his a-
nowe for that partyculer case is exceptyd se
cretly from his general auowe by this equy

tie or eyther as it is sayd byfore. Also yf a
lawe were made in a cytie that no man vn
der the payn of deth shuld open the gates of
the cytie byfore the sonne rysynge/yet yf the
Cytyzens byfore that houre fleynge from
theyr enemyes come to the gates of the cytie
& one for sauynge of the cytyzens openyth
the gates byfore the houre appoynted by the
lawe: yet he offendyth not the lawe/for that
case is exceptyd from the sayd generall lawe
by equytie as is sayd byfore/and so it appe
ryth that equytie rather folowyth the intent
of the lawe/ then the wordes of the lawe.
And I suppose that there be in lyke wyse
some lyke equyties groundyd vpon the ge
nerall rewles of the lawe of the realme.
(Student) ye verely wherof one is this.
There is a generall prohibycyon i the law
es of Englande: that it shal not be lawfull
to no man to entre in to the freholde of an
ther without auctorytie of the owner or of
the lawe/but yet it is exceptyd from the say
de prohybycyon by the lawe of reason: that
yf a man dryue beestes by the hyghe way &
the beestes happen to escape in to the corne
of his neyghbour. And he to brynge out his
beestes that they shuld do no hurte gothe in

to the grounde and fetteth out the beest: the
re he shall Justyfie that entre in to the grou
de by the lawe. Also notwithstandyng the
statute of Edwarde the thyrde made the.
xxvii. yere of his reygn / wherby it is ordayn
ned that no mā vpon payne of imprysone
ment shuld gyue any almesse to any valy
ant begger / that is well able to laboure: yet
yf a man mete with suche a valyant beg
ger in so colde a wether and so lyght appa
rell / that yf he haue no clothes he shall not
be able to com to no to wne to haue succour:
but is lykely rather to dye by the waye / the
therfore gyueth hym apparell to saue his ly
fe he shall be excused of the sayde statute by
suche an excepcion of the lawe of reason as
I haue spoken of. ¶ Doctoure) I know
well that as thou sayst he shall be exceptyd
of the sayd statute by conscyence / and ouer
that yt he shall haue great rewarde of god /
for his good dede, but I wolde wytte whe
ther the partie shal be also dischargyd in the
cōmon lawe by suche an excepcyon of the
lawe of reason or not / for though ygnorau
ce inuyncyble of a statute excuse the partie
agaynst god / yet as I haue herde it excu
syth not in the lawes of the realme / ne yet

in the Chauncerye as some say all thoughe the case be so that the partie to whom the fo fayture is gyuen may not with conscyence kepe it. ¶ Student) Verely by thy questy on thou haste put me in a great doute / Wher fore I pray the gyue me a respyte therin to make the an answere but as I suppose for the tyme how be it I wyll not fully affer me it to be as I saye / but it shuld seme that he shulde wele plede it for his dyscharge at the cõmon lawe / bycause it shall be taken that it was the intent of the makers of the statute to excepte suche cases. And the Ju ges may many tymes Juge after the myn de of the makers as farre as the lettre maye suffre and so it semyth they may in this case And dyuers other excepcyons there be also from other generall grounded of the lawe of the realme by suche equyties as thou haste remembred byfore that were to longe to re herse now. ¶ Doctoure) but yet I pray the shewe me shortlye somewhat more of thy mynde vnder what maner a man may be holpen in this Realme by suche equytie. ¶ Student) I wyll with good wyll she we the somewhat therin.

¶ In What maner a man ſhal be holpen by equytyes in the laWes of Eng/ lande. The.xxxii.chapytre.

TUdent) Fyrſte it is to be vnderſtande/ thet be i many caſes dyuers ex/ ceptyons from the gene/ rall groũdes of the laW of the Realme/ by other reaſonable groũdes of the ſame laWe/ Wherby a man ſhall be hol/ pen in the cõmon laWe/ as it is of this gene rall grounde that it is not laWfull for no man to entre vpon a dyſcent / yet the reſo/ nablenes of the laWe exceptyth from that grounde an infaunte that hathe ryght and hath ſuffertyd ſuche a dyſcent/ and hym al/ ſo that maketh contynuell clayme/ and ſuf ferith them to entre / notWithſtãdynge the dyſcent. And of that excepcion they ſhal ha ue auauntage in the cõmon laWe/ and ſo it is lyke Wyſe of dyuers ſtatutes as of the ſta tute Wherby it is phybyt/ that certayne par tyculer tenaũtes ſhall do no Waſte/ yet yf a leaſe for terme of yeres be made to a infaũt that is Within yeres of diſcreſcion: as of the

age of .v. or .vi. yeres / and a straunger do
Waste in this case / this enfaunte shal not be
punysshed for the Waste / for he is exceptyd
and excused by the lawe of reason . And a
Womā couerte to Whom suche a lease is ma
be after the couerture shall be also dyschar
ged of Waste after her husbādz deth by a rea
sonable maxyme & custome of the realme /
And also for reparacyōs to be made Vpon
the same groūde: it is lawfull for suche pa
tyculer tenaūtes to cutte doWn trees Vpon
the same groūde to make reparacions. But
the cause ther as I suppose is for yt the myn
de of the makers of the sayd estatute shalbe
taken to be that that case shuld be exceptyd
And in all these cases the partyes shall be
holpen in the same courte and by the cōmō
lawe. And thus it appertyth that somtyme
a man maye be exceptyd fro the rygoure of
a maxyme of the lawe by another maxyme
of the lawe . And somtyme fro the rygoure
of a statute by the lawe of reason / and som
tyme by the intent of the makers of the sta
tute / but yet it is to Vnderstande that most
cōmonly Where any thynge is exceptyd fro
the generall customes or maxymes of the
lawes of the realme / by the lawe of reason

he partie muſt haue his remedyè by a Wryt
hat is called ſub pena. yf a ſubpena lye in
he caſe:but Where a ſub pena lyeth/ & Whe/
e not it is not our intent to treate of at this
yme.And in ſome caſe there is no remedye
or ſuche an equytie by Waye of compulſy/
on / but all the remedye therin muſte be cō/
mytted to the conſcyence of the partye.
¶ Doctoure) but in caſe Where a ſub pena
yeth to Whom ſhall it be dyrectyd: Whether
o the Juge or to the partie. ¶ Student) It
hall neuer be dyrectyd to the Juge / but to
he partye pleyntyfe/or to his attorney and
herupon an iniūccyon cōmaūdynge them
by the ſame Vnder a certayne payne ther/
in to be contayned that he procede no ferther
at the cōmon laWe/tyll it be determyned in
he kynges Chauncerye/Whether the pleyn
yfe hathe tytle in conſcyence to recouer or
not. And Whan the pleyntyfe by reaſon
of ſuche an iniunccion ſeaſſyth to aſke any
ferther pceſſe:the Juges Wyll in lyke Wyſe
ceaſſe to make any ferther proceſſe in that
behalfe. ¶ Doctoure) is there any mencion
made in the laWes of Englande of any ſu
he equyties. ¶ Studēt) of this terme/equy
ie to that intent that it is ſpoken of here:the

re is no mēcyon made in the lawes of Eng
lande: but of an equytie dyryuyed vpon ce
tayne statutes mencyon is made many ty
mes and often in the lawe of Englande
But that equytye is all of another effect
then this is: but of the effecte of this equyti
that we nowe speke of mencyon is made
many tymes / for it is ofte tymes argued in
the lawe of Englāde where a sub pena ly
eth and where not: and dayly bylles be ma
de by men lernyd in the lawe of the realme
to haue sub penas. And it is not prohybyte
by the lawe: but that they may well do it so
that they make them not / but in case where
they ought to be made / and not for vexacy
on of the ꝑtye / but accordynge to the trouth
of the mater. And the lawe wyll in many
cases that there shal be suche remedye in the
Chauncerye vpon dyuers thynges grounds
dyd vhon suche equyties. And then the lor
de Chauncellet must ordre his cōscyence af
ter the rewles and groundes of the lawe of
the realme / in so moche that it had not ben
moche incōuenyent to haue assygned suche
remedye in the Chaūcery vpon suche equy
tyes for the. vii. grounde of the lawe of eng
lande / but for as moch as no recorde remay

neth in the kynges courtes of no suche bylle ne of the wrytte of sub pena or iniunccyon that is suyd therupon/therfore it is not sette as for a specyall grounde of the lawe/but as a thynge that is suffred by the lawe.
¶ Doctoure) then sythe the partyes oughte of ryght in many cases to be holpen in the Chauncerye vpon suche equyties. It semyth that yf it were ordayned by statute/that there shuld be no remedye vpon suche equyties in the Chauncerye/nor in none ether place/but that euery mater shuld be orderyd onely by the rewles and groundes of the cōmon lawe/that that statute were agaynst ryght and conscyence. ¶ Student) I thynke the same/but I suppose there is no suche statute. ¶ Doctoure) there is a statute of that effecte as I haue herde saye/wherin I wolde gladly here thy oppynyon. ¶ Student) shewe me that statute/and I shall with good wyll saye as me thynketh therin.

¶ Whether the statute herafter rehercyd by the Doctoure be agaynst conscyence or not. The.xviii.chapytre.

Doctoure) There is a statute made in the.iiii. yere of kyng Henry the.iiii.the xxii.chapytre / wherby it is enacted that Jugementes gyuen i the kyngs courtes/shall not be examyned in the Chauncerye/Parlyament/nor els where/by which statute it apperyth that yf any Jugemēt be gyuen in the kyngs courts agaynst an equytie/or agaynst any mater of cōscyence/ that there can be had no remedye by that equytie for the Jugemēt can not be reformyd without examynacyon / and the examynacyon is by the sayd statute prohybyt/ wherfore it semyth that the sayd statute is agaynst conscyence/ what is thyne oppynyon therin.

¶ Student) yf Jugementes gyuen in the kynges courtes shulde be examyned in the Chauncerye/byfore the kyngs counceyll or in any other place/the playntyfes or demaūdauntes shuld seldom come to the effecte of theyr suyte / ne the lawe shulde neuer haue ende. And therfore to eschewe that inconuenyence that statut was made. And though perauenture by reason of that statute/some synguler persone may happen to haue losse

Neuerthelesse the sayd statute is very neces
sarye to eschewe many great vexacyons &
vniust expences that wolde els com to ma
ny playntyfes that haue ryght wysely reco-
ueryd in the kynges courtes. And it is mo-
che more prouyded for / in the lawe of Eng
lāde that hurte nor damages shuld not com
to many then onlye to one. And also the
sayd statute doth not prohybyt equytie / but
it prohybyteth only the examynacion of the
Jugement / for the eschewynge of the incon
uenyence byfore rehercyd. And so it semyth
that the sayd statute standeth with good cō
scyence. And in many other cases where a
man doth wronge / yet he shall not be com-
pellyd by waye of compulsyon to reforme
it / for many tymes it muste be lefte to the cō
scyence of the ptie / whether he wyll redresse
it or not. And in suche case he is in conscyen
ce as well boūde to redresse it yf he wyll sa
ue his soule / as he were yf he were compel-
lable therto by the lawe as it maye appere
in dyuers cases that maye be put vpon the
same grounde. ¶ Doctoure) I pray the put
some of those cases for an example. ¶ Stu
dent) yf the defendaunte wage his lawe in
an accyon of dette broughte vpon a trewe

dette the pleyntyfe hath no meanes to come to his dette by Way of compulsyon neyther by sub pena nor other Wyse / and yet the defendaũt is bounde in cõscyence to pay hym. Also yf the graunde Jurye in atteynt affirme a false Verdyt gyuen by the petye Jurye there is no further remedy but the cõscyence of the partie. Also Where ther can be had no suffycyent prouffe / there can be no remedye in the Chauncerye / no more then there may be i the spyrytuell courte. And bycause thou haste gyuen an occasyon to speke of conscyence / I Wolde gladlye here thy oppynyon Where conscyence shall be reWlyd after the laWe / and Where the laWe shall be reWlyd after conscyence. ¶ Doctoure) And of that mater I Wolde lyke Wyse gladly here thy oppynyon specyally in cases groũdyd vpõ the laWes of Englande / for I haue not herde but lytell therof in tyme past / but byfore thou put any cases therof: I Wold that thou Woldest shewe me howe those tWo questiõs after thy oppynyon ar to be Understande.

¶ Of What laWe this questyon is to be Understande / that is to say Where cõscyence shall be reWlyd after the laWe. The.xiv.chapytre.

Student) the lawe wherof mēcyon is made in this questyon / that is to saye where conscyence shall be rewlyd by the lawe / is not as me semyth to be vnderstāde only of the lawe of reason: and of the lawe of god. But also of the lawe of man that is not contrary to the lawe of reason nor the law of god: but that it is superaddyd vnto them for the better orderyng of the cōmon welth / for such a law of man is alwayes to be sette as a rewle in conscyence so that it is not lawfull for no man to go fro it on the one syde ne on the other / for suche a lawe of man hath not only the strength of mānes law / but also of the lawe of reason / or of the law of god / wher of it is dyryuyed / for lawes made by man whiche haue receyued of god power to make lawes be made by god. And therfore cōscyence muste be orderyd by that lawe / as it muste be vpon the lawe of god / and vpon the lawe of reason. And ferthermore that law wherof mencyon is made in the latter ende of the chapyt̄ next byfore: that is to say in that questyon wherin it is askyd where the lawe is to be lefte and forsaken for con-

scyence/is not to be vnderstāde of the law of reason nor of the law of god: for tho two lawes maye not be lefte/ nor it is not to be vnderstāde of the lawe of man that is made in partyculer cases/and that is cōsonant to the lawe of reason/ & to the lawe of god/ and that yet that lawe shuld be lefte for cōscyence / for of suche a lawe made by man conscyence muste be rewlyd as is sayde byfore: nor it is not to be vnderstāde of a law made by man cōmaūdynge or prohybytynge any thyng to be done that is agaynst the lawe of reason/ or the lawe of god. For yf any lawe made by man/bynde any person to any thynge that is agaynst the sayd lawes/it is no lawe / but a corrupcyon & a manyfest errour. Therfore after them that be lernyd in the lawes of Englande/ the sayd questyon / that is to saye where the lawe is to be lefte for conscyence and where not/ is to be vnderstande in dyuers maners / and after dyuers rewles as hereafter shall somwhat be touchyd.

¶ Fyrste many vnlernyd persones byleue that it is lawfull for them to do with good conscyence / all thynges whiche yf they do them/they shall not be punysshed therfore

by the lawe: though the lawe doth not warraunt them to do yᵗ they do/ but only when it is done dothe not for some resonable consyderacyon punysshe hym that doth it/ but leuyth it only to his cōscyence. And therfore many psones do oft tymes that they shuld not do: & kepe as theyr owne that/ that in cōscyence they ought to restore/ wherof there is in the lawes of Englande this case.

¶ If two men haue a wood ioyntly/ & the one of them selleyth the wood and kepyth al the money hollye to hym selfe. In this case his felowe shall haue no remedye agaynst hym by the lawe/ for as they whē they toke the wood ioyntly put eche other in truste/ & were cōtentyd to occupy togyther: so the lawe sufferyth them to order the pfyttes therof accordynge to the truste that eche of them put other in. And yet yf one toke all the pfyttes/ he is bounde in conscyence to restore the halfe to his felowe/ for as the lawe gyueth hym ryght onlye to the halfe lande/ so it gyueth hym ryght onlye in conscyence to the half pfyttes. And yet neuertheles it can not be sayd in that case/ that the lawe is aygaynst cōscyence/ for the lawe neyther wyllyth ne cōmaundyth that one shuld take all

the profyttes / but leuyth it to theyr conscy-
ence / so that no defaute can be founde in the
lawe: but in hym that takyth all the profyt-
tes to hym selfe maye be assygned defaute /
Whiche he is bounde in cōscyence to reforme
yf he wyll saue his soule / though he can not
be compellyd therto by the lawe. And ther-
fore in this case & other lyke / that oppynyon
Whiche some haue that they may do with cō-
scyence all that they shall not be punysshed
for by the lawe yf they do it: is to be lefte for
conscyence / but the lawe is not to be lefte
for conscyence.

¶ Addycyon.

¶ Also many men thynke that yf a mā ha-
ue lande that another hath tytle to / yf he yf
hath the ryght shall not by the accyon that
is gyuen hym by the lawe to recouere his
ryght by: recouere damages: that then he that
hath the lande is also dyschargyd of dama-
ges in conscyence / And that is a great er-
rour in conscyence / for though he can not be
compellyd to yelde the damages by no mā-
nes lawe / yet he is compellyd therto by the
lawe of reason & by the lawe of god / Wher-
by we be bounde to do as we wolde be don
to / and that we shall not coueyte our neygh

bours good. And therfore yf tenaũt in tay-
le be dysseasyd and the dyseasoure dyeth sea
syd/and then the heyre in the tayle bryngeth
a Formedon and recoueryth the lande/and
no damages / for the lawe gyueth hym no
damage in that case: yet the tenaunt by con
scyence is bounden to yelde damages to the
heyre in tayle fro the deth of his auncestre.
¶ Also it is taken by some men/yt the law
muste be lefte for cõscyence where the lawe
doth not suffre a man to denye that he hath
byfore affermyd ĩ courte of recorde: or for yt
he hath wylfullye excludyd hym selfe ther-
of for some other cause / as yf the doughter
that is only heyre to her father wyll sue ly-
uerey with her suster that is bastarde ĩ that
case / she shall not be after receyued to saye
that her suster is bastarde: In so moche that
yf her suster take halfe the lande with her/
there is no remedy agaynst her by the law.
And no more there is of dyuerse other esto-
pellys/whiche were to lõge to reherce now
And yet the partye that may take auaunta
ge of suche an estopell by the lawe/is boun
de in cõscyẽce to forsake that auaũtage spe
cyally yf he were so estopped by ygnoraũ-
ce: and not by his owne knowlege & assent

for thoughe the lawe in ſuche caſes gyueth no remedye to hym that is eſtoppyd / yet the lawe Jugeth not that the other hathe ryght vnto the thynge that is in Baryaunce by twyxt theym

¶ Alſo it is vnderſtande that the lawe is to be lefte for conſcyence / where a thynge is tryed & foũde by verdyt agaynſt the trouth for in the cõmon lawe the Jugement muſt be gyuen accordynge as it is pleadyd & tryed lyke as it is i other lawes / that the Jugemente muſte be gyuen accordynge to that / that is pleadyd and prouyd.

¶ Alſo it is vnderſtande that the lawe is to be lefte for conſcyence where the cauſe of the lawe dothe ceaſe / for when the cauſe of the lawe doth ceaſe / the lawe alſo doth ceaſe in conſcyence as appertyth by this caſe here after folowynge.

¶ Addycyon.

¶ A man maketh a leaſe for terme of lyfe / and after a ſtraũger doth waſte / wherfore the leeſſe bryngeth an accyon of treſpaſſe & hath Jugement to recouer damages hauynge regarde to the treble damage that he ſhal yelde to hym in the reuercyon. And after he in the reuercyon byfore accyon of waſt ſued

dyeth so that the accyon of Waste is therby extynctyd / then the tenaunt for terme of lyfe (thoughe he maye se We execucyon of the sayd Jugemēt by the la We) yet he may not do it by cōscyence / for in cōscyēce he may take no more then he is hurted by the sayd tres passe / bycause he is not chargyd ouer With the treble damages to his lessoure.

¶ Also it is Vnderstande Where a la We is groundyd Vpon a presumpcyon / for yf the presumpcyon be Vntre We / then the la We is not to be holden in conscyence. And no We I haue shewyd the som What how that questyon / that is to say Where the la We shal be tewled after conscyence / I pray the shewe me Whether there be not lyke dyuersyties in other la Wes byt Wypt la We and cōscyence.

¶ Doctoure) Yes Verily Very many Wher of thou haste recyted one byfore / Where a thynge that is Vntre We is pleadyd and prouyd / in Whiche case Jugement muste be gyuen accordynge as Well in the la W Cyuyle as in the la We canon. And another case is that yf the heyre make not his inuentorye / he shall be bounde after the la We Cyuyle / to all the dettes though the goodes amount not to so moche. And the la We Canon is

not agaynst that law / and yet in cõscyence the heyre Whiche in the lawes of Englande is called an executour is not ī that case chargyd to the dettes / but accordynge to the value of the goodes. And nowe I praye the shewe me some cases where conscyence shal be rewlyd after the lawe. ¶ Student) I wyll with good wyll shewe the somwhat as me thynketh therin.

¶ Here folowyth dyuers cases where conscyence is to be orderyd after the lawe. The.xv.chappytre.

Student) The eldest sone shall haue and enioy his fathers landȝ at the cõmon lawe in cõscyence / as he shal ī the lawe. And in burghenglysshe the yonger sone shall enioy the inherytaunce / and that in conscyence. And in gauelkynde all the sõnes shall inheryt the lande togyther as doughters at the cõmon lawe / that in cõscyence. And there can be none other cause assygned why conscyence in the fyrste case is with the eldest

brother/ & in the secōde with the yonger brother/and in the thyrde case with all the bretherne/but bycause the lawe of Englande by reason of dyuers customes doth somtyme gyue the lande hollye to the eldest sone/ somtyme to the yongest/ & somtyme to all.

¶ Also yf a man of his mere mocyon make a feffemēt of two acres of lande lyinge in two seuerall shyres / and makyth lyuerey of season in the one acre in the name of both In this case the feffe hathe ryght / but onlye to yt acre wherof lyuerey of season was made bycause he hath no tytle by the lawe/ but yf both acres had ben ī one shyre he had had good ryght to bothe. And in these cases the dyuersytye of the law makyth the dyuersytye of conscyence.

¶ Also yf a man of his mere mocyon make a feffement of a maner & sayth not to haue & to holde. &c. with the appurtynaunces in that case the feffe hath ryght to the demesne landes & to the rentes / yf there be atturnament and to the cōmons ꝑteynynge to the maner: but he hathe nother ryght to the aduowsons appendaunt yf any be/nor to the vylleyns regardāt/ but yf this terme with thappurtynaunces had ben in the dede / the

feffe had had ryght in conscyence aswell to the aduowsons and vylleynes/as to the re sydewe of the maner: but yf the kynge of his mere mocyon gyue a maner with the ap purtynaunces / yet the donee hath neyther ryght in lawe nor conscyence to the aduow sons nor vylleyns. And the dyuersytye of the lawe in these cases makyth the dyuersy tye of conscyence.

¶ Also yf a man make a lease for terme of yeres yeldynge to hym & to his heyres a cer tayne rent vpon condycyon that yf the rent be behynde by.xl.dayes.&c.that then it shal be lawfull to the lessoure and his heyres to rentre. And after the rent is behynde the les sour askyth the rent accordynge to the lawe & it is not payde/the lessour dyeth his heyre entreth. In this case his entre is lawfull both in lawe & cōscyence / but yf the lessour had dyed byfore he had demaūdyd the rent. And his heyre demaūdz the rent/& bycause it is not payde he rentreth/ In that case his rentre is not lawfull nother in lawe nor in conscyence.

¶ Also yf the tenaunte in dower sowe her lande and dye byfore her corne be rype that corne in cōscyence bylongeth to her execu

toures / & not to hym in the reuercyon / but otherwyse it is ī cōscyēce of grasse & frutes And the dyuersytie of the lawe makyth ther also the dyuersytie in conscyence.

¶Also yf a man seased of landes in his demesne as of fee / byquethyth the same by his last wyll to another / and to his heyres and dyeth / In this case the heyre not withstandynge the wyll hathe ryght to the lande in conscyence. And the reason is bycause the lawe Jugeth that wyll to be voyde / and as it is voyde in the lawe / so it is voyde in conscyence.

¶Also yf a man graunte a rente for terme of lyfe & make a lease of lande to the same graunte for terme of lyfe. And the tenaunt alyenyth both in fee. In this case he in the reuercyon hath good tytle to the lande both in lawe and conscyence and not to the rent: and the reason is bycause the lande by that alyenacyon is forfet by the lawe to hym in the reuercyon and not the rent.

¶Addycyon.

¶Also yf landes be gyuen to two men & to a woman in fe / and after one of the men entermaryeth with the woman / and alyeneth the lande & dyeth. In this the woman

hath ryght but only to the thyrde parte/but
yf the man and the woman had ben mary
ed togyther byfore the fyrste feffement ther
the woman notwithstandynge the alyena
cyon of her husbonde shuld haue had rygh
in lawe and conscyence to the one halfe of
the lande. And so in these two cases conscy
ence doth folowe the lawe of the realme.
¶ Also yf a man haue two sones one byfo
re spousellys and another after spousellys/
and after the father dyeth seasyd of certayn
landes. In that case the yonger sone shall
enioye the landes in this realme as heyre to
his father bothe in lawe and conscyence.
And the cause is byecause the sone borne aft
spousellys/is by the lawe of this realme the
very heyre. And the elder sone is a bastard.
And of these cases and many other lyke in
the lawes of Englande may be formyd the
Silogisme of conscyence/ or the trewe Ju
gement of conscyence in this maner: sinder
sis mynystreth the maior thus. Rygh wyse
nesse is to be done to euery man: vpon whi
che maior the lawe of Englande mynystryth
the minor thus: the inherytaunce bylongeth
to the sone borne after spousellys / & not to
the sone borne byfore spousellys / then con/

scyence maketh the conclusyon & sayth therfore the inherytaunce is in conscyence to be gyuen to the sone borne after spousellys. And so in other cases infynyte may be formyd by the law the Silogisme or the ryght Jugement of cōscyence: wherfore they that be lernyd in the law of the realme say that ī euery case where any lawe is ordeyned for the dysposycion of lādes & goods / whiche is not agaynst the law of god / nor yet agaīst the law of reason / that y' law byndeth all them y' be vnder the law ī the courte of cōscyence / that is to say inwardly ī his soule. And therfore it is sō what to meruayle that spyrytuel mē haue not endeuoryd them self in tyme paste to haue more knowlege of the kynges lawes then they haue done / or that they yet do / for by the ygnoraūce therof they be oft tymes ygnoraunt of that / that shuld ordre them according to ryght & Justyce: as well consernynge them selfe as other that come to them for counceyll. And nowe for as moche as I haue answhered to thy questyons as well as I can / I praye the that thou wylte shewe me thy oppynyon in dyuers cases formyd vpon the lawe of Englande wherin I am in doute / what is to be

holden therin in cõscyence. ¶ Doctoure) she we me thy questyons/and I wyll saye as me thynketh therin.

¶ The fyrste questyon of the student. The.xxvi.chappytte.

STudent) yf any infaũte that is of the age of.xxv. yere and hath reason & wysdom to gouerne hym selfe selleth his lãde and with the money therof byeth other lande of greater value then the fyrst was and taketh the profyttes therof/whether may that infaũte aske his fyrst lande agayne in conscyence / as he may by the lawe. ¶ Doctoure) what thynkest thou in that questyon. ¶ Student) me semyth that for as moche as the lawe of Englande in this artycle is groundyd vpon a presumpcyon / that is to saye that infauntes commonly afore they be of the age of.xxvi.yeres be not able to gouerne them selfe / that yet for as moche as that presumpcyon fayleth in this infaunte that he may not in this case with conscyence aske the lande agayne/ that he hath solde to his great auaũtage as

byfore apperyth. ¶ Doctoure) Is not this sale of the infaunte and the feffement made therupon yf any were voydable in the lawe. ¶ Student) yes verylye. ¶ Doctor) And yf the feffe haue no ryght by the bargayne/nor by the feffemēt made therupon: wherby shulde he then haue ryght therto as thou thynkest. ¶ Student) by cōscyence as me thynketh for the reason that I haue made byfore. ¶ Doctoure) And vpon what lawe shuld that cōscyence be groūdyd that thou spekyst of / for it can not be groundyd by the lawe of the realme as thou hast sayd thy selfe. And me thynketh that it can not be groūdyd vpon the law of god/nor vpō the lawe of reason/for feffementes nor contractes be not groūdyd vpon neyther of tho lawes/but vpon the lawe of man. ¶ Student) after the law of proprytie was ordayned/the people myght not conuenyently lyue togyther without contractes/and therfore it semyth that cōtractꝫ be groūdyd vpon the lawe of reason / or at the leste vpon the lawe that is called Jus gentium. ¶ Doctoure) though contractes be groūdyd vpon that lawe that is called Jus gentium/ bycause they be so necessarye and so generall

amõge all people / yet that prouyth not that contractes be groundyd vpon the lawe of reason / for thoughe that lawe called Jus gentium be moche necessarye for the people yet it may be chaungyd. And therfore yf it were ordayned by statute that there shulde be no sale of lande / ne no cõtracte of goodes / and yf any were that it shuld be voyde / so that euery man shuld contynue stylle seasyd of his landes & possessyd of his goodes / the statute were good. And then yf a man agaynst that statute solde his lande for a sume of money / yet the seller myghte lawfully retayne his lande accordyng to the statute. And then he were bounde to no more / but to repay the money that he receyued w^t reasonable expences in that behalfe / and so in lyke wyse me thynketh that in this case the infaunte may with good cõscyence reentre in to his fyrste lande bycause the cõtracte after the maxymes of the lawe of the realme is voyde / for as I haue herde the maxymes of the lawe be of as great strength in the lawe as statutes. And so me thynketh that in this case the infaunte is boũde to no more / but onlye to repay the money to hym that he solde his lande vnto / with suche re-

ſonable coſtꝭ and charges as he hath ſuſtay
ned by reaſon of the ſame. but yf a man ſell
his lande by a ſuffycyent and laWfull con
tracte thoughe there lacketh lyuerye of ſeaꝭ
ſon or ſuche other ſolempnyties of the laWe
yet the ſeller is bounde in conſcyence to perꝭ
forme the contracte / but in this caſe the conꝭ
tracte is inſuffycyent / and ſo me thynketh
great dyuerſytie betWyxte the caſes.
¶ Student / For this tyme I holde me conten
tyd With thy oppynyon.

¶ The ſeconde queſtyon of the ſtudent. The. xxvii. chapytre.

STudent / yf a man that hathe landes for terme of lyfe be impanelled Vpon an inqueſt / & therupō leſyth yſſues and dyeth / Whether may tho yſſues be leuyed Vpon hym in the reuercyon in cōſcyence / as they may be by the laW. ¶ Doctoure / yf they may be leuyed by the laWe / What is the cauſe Why thou doeſt doute Whether they may be leuyed by cōſcyēce. ¶ Student for there is a maxyme in the laWes of Englande / that Where tWo tytles ronne togyther / the eldeſt tytle ſhal be preſerryd.

And in this case the tytle of hym in the re-
uercyon is byfore the tytle of the forfetour
of the yssues. And therfore I doute some
what whether they maye be lawfully leuy
ed. ¶ Doctour) by ye reason it seymth thou
arte in doute what the lawe is in this case
but that must necessaryly be knowen / for
els it were in vayne to argue what cõscy-
ence wyll therin. ¶ Student) it is certayne
that the lawe is suche / & so it is lyke wyse yf
the husbonde forfet yssues & dye / tho yssues
shalbe leuyed on the landes of the wyfe.
¶ Doctour) And yf the lawe be suche it se-
myth that conscyence is so in lyke wyse / for
syth it is the lawe that for execucyon of Iu-
styce euery mã shal be ipanelled when ne-
de requyreth it semyth resonable: that yf he
wyl not appere that he shuld haue some pu-
nysshement for his not apperaunce: for els
the lawe shuld be clerly frustrat in ye poynt
And that payne as I haue herde is that he
shall lese yssues to the kyng for his not ap-
peraũce / Wherfore it semyth not inconuen-
ent nor agaynst conscyence though the lawe
be that tho yssues shall be leuyed of hym in
the reuercyon / for that cõdycyon was scar-
lye vnderstande in the lawe to passe with

the lease When the lease Was made. And therfore it is for the lessoure to be Ware and to preuent that daunger at the makynge of the lease / or els it shall be aiuged his owne defaute. And then this pertyculer maxyme Wherby suche yssues shall be leuyed vpon hym in the reuercyon is a pertyculer excep= cyon in the law of Englande from that ge nerall maxyme that thou haste remembred byfore / that is to say that Where two tytles ronne togyther / that the eldest tytle shall be preferryd / and so in this case that generall maxyme in this poynte shall holde no pla= ce nother in law nor in conscyence / for by this pertyculer maxyme the strēgth of that generall maxyme is restrayned to euery in tent / that is to saye as Well in law as in conscyence.

¶ The thyrde questyon of the student. The.xviii.chapytre.

STudent) Yf a tenaunt for terme of lyfe / or for terme of yeres do Waste Wherby they be bounde by the law to yelde to hym i the reuercyon treble dama= ges. And shall also forfet the place Wasted /

Whether is he also bounde in conscyence to pay the damages & to restore the place Wasted immedyatlye after the Waste done / or he is the syngle damages / or that he is not bounde therto tyll the treble damages and the place Wasted be recouerydin the kynges courte. ¶ Doctoure) Byfore Jugement gyuen of the treble damages and of the place Wasted he is not bounde in cõscience to pay them. For it is Vncertayne What he shulde pay / but it suffyseth that he be redye tyl Jugemẽt be gyuen to yelde damages accordynge to the Value of the Waste / but after the Jugement gyuen / he is bounden in conscyence to yelde the treble damages / and also the place Wasted. And the same la We is in all statutes penall / that is to saye that no man is bounde in conscyence to pay the penaltye tyll it be recouerydby the la We.

¶ Student) Whether maye he that hath offendyd agaynst suche a statute penal desende the accyon and hyndre the Jugement to the intent he Wolde not paye the penaltye / but only the syngle damages. ¶ Doctoure) yf the accyon be taken ryght Wyselye accordynge to the statute / & Vpon a Juste cause the defendaunt may in no Wyse defende the

accyon/onles he haue a trewe dylatory ma/ter to plede: whiche shuld be hurtful to hym yf he pledyd it not/ though he be not boūde to pay the penaltye tyll it be recoueryd.

¶ The fourth questyon of the stu/dent. The.xxiiii.chapytre.

Student) If a man infeffe another in certayne Lande vpon condycyon that yf he infeffe any other: that it shal be lawfull for the feffour & his heyres to reentre.&c. whether is this con/dycyon good in cōscyence though it be voy/de in the lawe. ¶ Doctour) what is the cause why this cōdycyon is voyde in the lawe. ¶ Student) The cause is this/by the lawe it is incydent to euery state of fee symple/ that he that hath that estate may lawfully by the lawe and by the gyfte of the feffoure make a feffement therof. And then when the feffoure restrayneth hym after that he shall make no feffemēt to no man agaynst his owne former graunt/and also agaynst the purytie of the state of a fee symple/ the lawe Jugeth the condycyon to be voyde/

but yf the condycyon had ben that he shuld not haue infeffed suche a man / or suche a man that condycyon hadde ben good / for yet he myghte infeffe other. ¶ Doctoure) though the sayde condycyon be agaynst the effecte of the state of a fee symple / and also agaynst the lawe. Neuerthelesse it is not agaynst the intent that the partyes agreed apon / that at the tyme of the lyuerey. And for as moche as the intent of the ptyes was that yf the feffe infeffed any man of the lande / that they the feffoure shuld entre / and to that intent the feffe toke the estate and after breke the intent it semyth that the lande in conscyence shulde returne to the feffoure. ¶ Student) the intent of the partyes in the lawes of Englande is voyde in many cases / that is to say yf it be not orderyd accordynge to the lawe. As yf a man of his meere mocion without any recompence intendynge to gyue landes to another and to his heyres make a dede vnto hym / wherby he gyueth hym the landes to haue and to holde to hym for euer intendynge that by that worde (for euer) the feffe shulde haue the lande to hym and to his heyres / in this case his intent is voyde / and the other shall haue the

lande only for terme of lyfe. Also yf a man gyue tãdes to another and to his heyres for terme of .xx. yeres intendyng that yf the lesse dye within the terme / that then his heyrs shulde enioye the lande durynge the terme. In this case his intent is voyde / for by the lawe of the realme all chatellys reall & personall shall go to the executoures / and not to the heyre. Also yf a man gyue landes to a man and to his wyfe / & to the thyrde persone intendynge that euery of them shulde take the thyrde parte of the lande as thre cõmon persons shuld his intent is voyde / for the husbonde & the wyfe as one persone in the lawe shall take onlye the one halfe and the thyrde persone the other halfe / but these cases be alway to be vnderstãde where the sayd estates be made without any recompence. And for as moche as in this pryncypall case / the intent of the feffour is groundyd agaynst the lawe: & that there is no recompence appoyntyd for the feffement: me thynkyth y' the feffour hath neyther ryght to the lande by lawe nor conscyence / for yf he shuld haue it by conscyence / that cõscyence shuld be groũdyd vpon the lawe of reason & that it can not / for condycyons be not

groundyd vpō the lawe of reason / but vpon the maxymes & custome of the realme. And therfore it myght be ordaynyd by statute / that all cōdycyons made vpō lande shulde be voyde. And when a cōdycyon is voyde by the maxymes of the lawe / it is as fully voyde to euery intent as yf it were made voyde by statute / & so me thynkyth that in this case the feffour hath no ryght to the lande ī lawe nor in conscyence. ¶ Doctour) I am cōtent thy oppynyon stande tyll we shall haue hereafter a better leasure to speke fur ther in this mater.

¶ The.v.questyon of the student. The.xxv.chappytre.

¶ Student) yf a fyne with proclamacyon be leuyed accordynge to the statute and no clayme made within .v. yeres. &c. whether is the ryght of a straunger extynct therby in conscyence / as it is in the lawe. ¶ Doctoure) vpon what consyderacyon was that statute made. ¶ Student) that

the right of landes and tenementes/myght be the more certaynly knowen and not to be so vncertayne as they were byfore that statute. ¶ Doctoure) and when any lawe of man is made for a cōmon welth/or for a good peace and quyetnes of the people / or for any inconuenyence or hurte to be sauyd from them/that lawe is good thoughe per/case it extynct the ryght of a straunger and muste be kept in the courte of conscyence for as it is sayd byfore in the.iiii.chapitre / By lawes ryght wysely made by mā : it appe/ryth who hath ryght to landes and goodes: for what soeuer a man hath by suche a law he hath it ryght wysely . And what so euer he holdeth agaynst suche a lawe he holdyth vnryght wysely. And ferthermore as it is sayde there all lawes made by man / whi/che be not contrarye to the law of god must be obseruyd ⁊ kepte/and that in conscyence. And he that dyspyseth them dyspyseth god: and he that resystyth them resystyth god/ also it is to be vnderstande that possessy/ons and the ryght therof be subiecte to the lawes/so that they therfore with a cause re sonable maye be translated ⁊ alteryd from one man to another by the acte of the lawe.

And of this cōsyderacion that law is grou
dyd that by a contracte made in feyres and
markettys the propretye is alteryd excepte
the ꝓpretye be to the kynge/ so that the byer
paye tolle/ or do suche other thynges as is a
customyd there to be done vpon suche con-
tractes / and that the byer knoweth not the
former propretye. And in the lawe Cyuyle
there is a lyke lawe that yf a man haue ano
ther mānes good with a tytle thre yere thyn
kynge y the hath ryght to it/ he hath the very
ryght vnto the thynge: and that was made
for a lawe to the intent that the propretye &
ryght of thynges shuld not be vncertayne/
and that varyaunce and stryfe shulde not
be amonge the people. And for as moche as
the sayd statute was ordayned to gyue a cer
teyntye of tytle in the landes & tenementes
comprysyd in the fyne/ It semyth that that
fyne extynctyth the tytle of all other / as
well in conscyence as it dothe in the lawe.
And sythe I haue answeryd to thy questy
on I praye the let me knowe thy mynde in
one questyon concernynge Tayled landes
and then I wyll trouble the noo ferther at
this tyme. ∴ ∴ ∴

¶ A questyon made by the Doctoure/how certayne recouerys that be vsyd in the kynges courtes to defete Tayled lāde may stande with cōscyence.

The.xxvi.chappytre.

Doctoure) I haue herde say that when a man that is seasyd of landes in the tayle selly th the lande. That it is cōmonly vsyd that he that byeth the lande shall for his suertye/and for the auoydyng of the tayle in that byhalfe/cause some of his frendes to recouer the sayde landes agaynst the sayd tenaunte in tayle: Whiche recouerye as I haue ben credably enformyd shal be had in this maner/the demaundauntes shall suppose in theyr Writte and declaracyon/ that the tenaunt hath no entre/but by suche a straunger as the byer shall lyste to name and appoynte/Where in dede the demaundaunt neuer had possessyon therof/nor yet the sayd straunger. And therupon the sayde tenaunte in tayle shall appere in the courte and by couyn and by assent of the partyes/ shall vouche to warraūte one that he kno-

weth well hath no thyng to yelde in value
And that vouchee shall appere and the de-
maundauntes shall declare agaynst hym/
& therupon he shall take a day to enperle in
the same terme: & at that day by assent & co-
uyn of the partyes / he shall make defaulte
vpon which default bycause it is a default
in despyte of the courte / the demaundaunt
shall haue Jugemēt to recouer agaynst the
tenaunte in tayle / and he ouer in value a-
gaynst the vouchee and this Jugemēt and
recouerye in value / is taken for a barre of
the tayle for euer / how may it therfore be ta-
ken that that lawe standeth with conscyen-
ce that as it semyth aloweth and fauouryth
suche fayned recoueryes. ¶ Student) yf the
tenaunt in tayle sell the lāde for a certayne
sūme of money as is ageed byt wyxte them
at such a pryce as is cōmonly vsed of other
lādes / & for the suertye of the sale sufferyth
suche a recouerye as is aforesayd / what is
the cause that mouyth the to doubte whether
the sayd cōtracte or the recouery made theru-
pon: for the suertye of the byer that hath true-
ly payde his money for the same shuld stan-
de with cōscyence. ¶ Doctoure) Two thyn-
ges cause me to doute therin / one is for that

that after our Lorde had gyuen the lande of
byheste to Abraham and to his sede/that is
to say to his chyldren in possessyon alwaye
to contynue/he sayde to Moyses as it appe-
ryth leuitic.xxv.the lande shall not be sol-
de for euer/for it is myne. And then our lor
de assygned a certayne manet howe the lā-
de myght be redemyd in the yere of Jubylie
yf it were solde byforetyme for as moch as our
Lorde wold y^t the lāde so gyuē to Abrahā
& his chyldren shuld not be solde for euer/it
semyth that he doth agaynst the ensāple of
god y^t alyenyth or selleyth the lande y^t is gy-
uen to hym & to his chyldren as lād̄s Intay-
led be gyuen. Another cause is this: it appe
tyth by the cōmaundemēt of god that thou
shalte not coueyte the howse of thy neygh-
boure.&c. And yf the cōcupiscence be phybi-
ted more stronger the vnlawfull takynge
& withholdyng therof is prohybyt/and for
as moche as tayled lande whan the aunce-
stre is deed is a thynge that of ryght is belō-
gynge to his heyre/for that he is heyre accor-
dynge to the gyfte/howe maye that lande
with ryght or cōstreynce be holden from hym.
¶ Student) not withstandynge that prohy-
bycyon of almyghty god: wherby the lande

that was gyuen to Abraham & to his seed myght not be alyened for euer / yet landes within walled to ones myght la wfully be alyened for euer / except the landes of the leuytes as it appertyth in the sayd Chapytre of leuitic̃.xxv. And so it appetyth that the sayd phybycyon was not generall for euery place: and that amonge the Jewes. And it appertyth also that it was gyuen only for Abraham and his chyldren / and so it was not generall to all people. And it appertyth also that it extended not but only to the lande of promyssyon / as it appertyth by the wordes of the sayd Chapytre / where it is sayde thus all the Regyon of your possessyon shall be solde vnder the cõdycyon of redemynge / wherby appertyth that landes in other cõtrees be not bounde to that condycion / & as they be not bounde to that cõdycyon: by the same reason / it folowyth that they be not boũde to the same succcssyon. Therfore the sayde la we that wyll that the lande gyuen to Abraham and to his seed shall not be solde for euer / byndeth no lande out of the lande of promyssyon / and some men wyll say that sythen the passyon of oure Lorde was promulgate & knowen it byndeth not there.

And to thy seconde reason Whiche is groun
ded vpon the cõmaũdemẽt of god: It must
nedes be graunted that it is not lawfull to
any man vnlawfully to couete the howse
of his neyghbour/ & that they more stronger
he may not vnlawfully take it from hym:
but then it remaynyth for the yet to proue/
howe in this case this tayled lande that is
solde by his auncestre/and Wherof a recoue
rye is had of recorde in the kyngs courte may
be sayd the lande of the heyres. ¶ Doctour)
that may be prouyd by the lawe of the real/
me/that is to say by the statute of Westme/
ster the seconde the fyrste chapytre / Where it
is sayd thus. The Wyll of the gyuer expres
sely contayned in the dede of his gyfte shal
be from henssorth obseruyd / so that they to
Whom the tenements be so gyuen shall not
haue power to alyen/ but yt the lãdes after
theyr deth shall remayne to theyr yssue or re/
tourne to the donoure yf the yssue fayle / by
the Whiche statute it apperyth euydẽtly that
though they to Whom the tenementes Were
so gyuen alyened them awaye/ that yet ne/
uertheles they in lawe and conscyence by
reason of the sayd statute ought to remayn
to the heyres accordyng to the gyfte/ for it is

holden cõmonly by all Doctoures that the cõmaundementꝭ and rewles of the lawe of man or of a posityue lawe that is lawfully made/ bynde al that be subgiettes to that lawe accordyng to the mynde of the maker and that in the courte of cõscyence. ¶ Student) dorst thou thynke that yf a man offende agaynst a statute penall that he offendyth in conscyence admyt that he do it not of a wylfull dysobedyence for that he wyll not obey the lawe/ for yf he do it of dysobedyence I thynke he offendyth. ¶ Doctour) yf it be but only a statute that is called Popular it byndyth not in cõscyence to the payment of the penalytye/ tyll it be recouered by the lawe. And than it doth bynde in conscyence/ but yf a statute be made pryncypally to remedy the hurte of the partye/ and for that hurte it gyueth a penaltye to the partye in that case the offendor of the statute is bounde immediatlye to restore the damages to the value of the hurte as it is vpon the statute of Waste/ but the penaltye aboue the hurte he is not bounde to paye tyll Jugement be gyuen as it is sayde byfore/ but statutes by the whiche it is assygned who shall haue ryght or properitye to these landes and tene-

mentꝭ / or to theſe goodes or catalles yf it be
not agaynſt the laWe of god / nor agaynſt
the laWe of treaſon bynde all theym that be
ſubgect to the laWe: in laWe and cõſcyence /
as ſuche a ſtatute is the ſtatut of Weſtmeſter
the.ii. Wherof We haue treatyd byfore / Wher
fore it muſt be obſeruyd i cõſcyence. ¶ Stu/
dent) but ſome holde that the ſayd ſtatute of
Weſtm the.ii. Was made of a ſyngularitie &
ꝓſampcyon of many that Were at the ſayd
Parliament for epaltynge & magnyfyenge
of theyr owne blode: & therfore they ſay that
that ſtatute made by ſuche a preſumpcyon
byndyth not in cõſcyence. ¶ Doctour) It is
Very pery klous to Juge for certayne that
the ſayd ſtatute Was made of ſuche a ꝑſum
pcyon as thou ſpekeſt of / for there be many
conſyderacyons to proue that the ſayde ſta/
tute Was not made of ſuche a preſũpcyon
but rather of a Very good mynde of all the
Parlyament / or at the leſte of the more par
te therof / and for the cõmon Welth of al the
realme / and fyrſte in the kynge the Whiche
in the ſayd Parlyament Was the hede and
moſte chyef & pryncypall parte of the Par/
lyament as he is in euery Parlyament / can
not be noted no ſuche intent / For it is not

neceſſary nor it was not they i vſe that la/
des of the crowne ſhulde be entayled: and
in ſpyrytuall men ne yet in certayne burge
ſyes and cytyzens of the ſayd Parlyament
Which at that tyme had no lande/there can
be noted no ſuche ſyngularytye / nor yet in
the noble men & gentylmen nor ſuche other
as were of the ſayde Parlyament and had
landes and tenementes / It is not good to
Juge in certayne that they dyd it of ſuche a
preſumpcyon/but it is good and expedyent
in this caſe as it is in other caſes that be in
doubte to holde the ſurer waye / and that is
that it was made of charytie / to the intent
that he nor the heyres of hym to whom the
lande was gyuen ſhuld not fall in to extre
me pouertye/and therby haplye to ronne in
to offence agaynſt god/and though it wer
tre we as they ſaye that it was not made of
charytie but of preſumpcion & ſyngularytie
as they ſpeke of. Neuertheleſſe for as moche
as the ſtatute is not againſt the lawe of god
nor agaynſt the lawe of reaſon it muſte be
obſeruyd by all them that be ſubgiettes vn
to that lawe / For as Johñ Gerſon ſayth
in the treatyſe that he entytuleth in laten
De Vita ſpirituali aie: the fourth leſſon

the thyrde corollarye: sayth that god wyll that makers of lawes iuge only of out war de thynges & reserue secrete thynges to hym. And so it apperyth that man may not iuge of the inward intent of the deed, but of such thyngs as be apparaunte / and certayne it is that it is not apparaunte that there was any suche corrupt entente in the makers of the sayde statute / how we maye it therfore be sayd that that lawe is good or ryght wyse / that not only suffreth such thyngs agaynst the statute, but also agaynst the cõmaundement of god. ¶ Student) To that some answere and say: that when the lande is solde & a recouery is had therupon in the kynges courte of recorde that it sufficeth to barr the tayle in consequence / for they saye that as the tayle was fyrste ordayned by the lawe. So they saye that by the lawe it is adnulled agayne. ¶ Doctoure) be thou thy selfe Iuge yf in yt case there be lyke auctorytie ī the makynge of the tayle as there is in the adnullynge therof / for it was ordayned by auctorytie of Parlyament / the whiche is alway taken for the most hyghe courte in this realme byfore any other / and it is anulled by a false supposell: for that that they that be na-

med demaūdaūtes shuld haue ryght to the lā
de where in trouth they neuer had ryght ther
to: Wherupō folo weth a false supposel ī the
wryt/ & a false supposell in the declaracyon
& a voucher to warraūte by couyn of such a
persone as hath no thyng to yelde in value
& therupon by couyn and collucyon of the
ptyes folo weth the default of the voucher:
by the whiche defaulte the Jugement shall
be gyuen/ And so all that Jugemēt is dery
uyed & groūdyd of the vntrue supposel & co
uyn of the partyes/ wherby the lawe of the
realme that hath ordayned suche a wryt of
entre to helpe them that haue ryght to lādes
or tenēts is defraudyd: the courte is desceyuyd
the heyre is disherited: & as it is to doubte the
byer & the seller and theyr heyres & assygnes
hauyng knowlege of the tayle be bounde
to restytucyon / and verylye J haue harde
many tymes/ that after the lawe of the real
me suche recoueryes shuld be no barr to the
heyre in the tayle/ yf the lawe of the realme
myght be therin īdifferently harde. ¶ Stu
dent) J can not se but that after the law of
the realme it is a barr of the tayle/ for when
the tenaunte in tayle hath vouched to war
rauntye / and the vouchee hathe apperyd

entred in to the warraũtye/ & after hath made defaute in despyte of the courte: wherupõ Jugement is gyuen for the demaundaunt agaynst the tenaũt/ & for the tenaũt that he shal recouer in value agaynst the vouchee/ the heyre in the tayle shuld after bringe his formedone and recouer the landes Intayled/ and after the vouchee purchaseth landes/than shuld the heyre also haue epeaucyon agaynst hym to the value of the landes entayled as heyre to his auncestre that was tenaunt in the fyrste accyon:and so he shuld haue his owne landes/ and also the landes recouerȳd in value:and therfore bycause of that pſumpcyon that the vouchee may purchase landes after the Jugemẽt/some be of oppynyon that it is in the lawe a good barr of the tayle. (Doctoure) I suppose that in that case that thou hast put that the vouche may barre the heyre in tayle of his recouerie in value bycause he hath recouerȳd the fyrst landes. Neuerthelesse I wyll take a respyte to be aduysed of that recouerye in value. And yf thou can yet shewe me any other cõsyderacyon why the sayde recouerȳes shuld stande with conscyence/ I praye the let me here thy concepte therin/ for the multytude

of the sayd recoueryes is so great that it were great pytie that all they shuld be bounde to restytucyon that haue landes by suche recoueryes syth there is none that as far as I can here dysposeth theym to restore. ¶ Student) some men make an other reason to proue that the sayd recoueryes shuld be suffycyent by the law to a voyde the state of west. then & yf they be suffyciēt therto/they be suffycyent in conscyence. ¶ Doctour) What is theyr reason therin. ¶ Studēt) In the. vii. yere of kynge Henry the. viii. the. iiii. chapytre amonge other thynges it is enacted/that all recouerers theyr heyres & assygnes may aduowe and iustyfie for rentes seruyce & customes by them recoueryd: as they agaynst whome they recoueryd myght haue done: And then they saye that when the Parlyament gaue to suche recouerers auctorytie to aduowe and iustyfie for suche rentes customes and seruyces as they recoueryd/that the entent of the parlyament was that such recouerers shulde haue ryght to that: for the wihche they shuld aduowe or iustyfye: for els they saye that it shuld be in vayne to gyue them suche power/and that the Parlyament shuld els be taken in maner as forty

fyers of wrongfull tytles: and so they saye that suche recouerers by reason of the sayde statute haue ryght by the lawe. (¶ Doctour) that statute as it semyth was made only to gyue to the recouerers a forme to aduowe & iustyfie/ whiche they had not byfore though they had recoueryd vpon a good tytle. And the cause why they had no forme to aduowe or iustyfye byfore the sayde statute was for as moche as the recouerers dyd not by the pretence of theyr accion affetme the possession of hym or them agaynste whom they recoueryd/ nor claymed not by them/ but rather dysafermyd and dystroyed theyr astate. And therfore they can not alege any contynuaūce of theyr tytle by them/ as they may that haue rentes or seruyces/ or suche other of the graunte of other by dede or by fyne. And therfore as it semyth the most prynsypall intent of that statute was: that suche recouerers shuld auowe & iustyfye for rentes seruyces & customes as they shuld or myghe do that had them by fyne or dede: not hauynge any respect as it semyth whether they recoueryd agaynst tenaunte in fee symple or in fee tayle/ nor whether the recouerye were had vpon a ryghtful tytle. And therfore

as me semyth the sayd estatut neyther affer
myth nor dyssaffermyth the tytle of the re/
couerye Wherby they do aduoWe. for yf a/
ny man had ryght byfore the recouerye that
ryght shulde remayne vnto hym notWith/
standynge the sayd statute: & so me semyth
that the tytle of them that haue the landes
entaylyd by suche recouerye is no thynge
fortyfyed nor affermyd by the sayd estatute
but yt they are in the same case as they Were
byfore: What thynkest thou therin. ¶ Stu/
dent) this mater is great/ for as thou sayst
there be so many that haue tayled lādes by
suche recouerye / that it Were great pytie &
heuynes to condempne so many persones &
to Juge that they all Were bounde to resty/
tucyon: For I thynke there be but fe We in
this realme that haue land of any notable
Value: but that they or theyr aunce stours/
or som other by Whom they clayme haue had
parte therof by suche recouerye/ In so mo/
che that lordes spyrytuall and temporall/
knyghtes/ squyres ryche men/ & poore/ Mo/
nasterye/ Colleges/ and hospytallys haue
suche landes/ for suche recouerye haue ben
Vsed of longe tyme/ Who may thynke ther/
fore Withoute great heuynes that so many

men ſhuld be bounde to reſtytucyon / & that
yet as thou ſayſt / no man diſpoſeth hym to
make reſtytucyon . And ſo I am in maner
perplexed and wot not what to ſay in this
caſe / but that yet I truſte that ygnoraunce
may excuſe many perſones in this behalfe.
¶ Doctour) ygnoraunce of the dede may ex
cuſe / but ygnoranuce of the lawe excuſyth
not but it be inuyncyble / that is to ſay that
they haue done that in them is to knowe the
trouth as to councell with lernyd men: and
to aſke them what the lawe is i that behalfe
and yf they anſwere them that they may do
this or that lawfully / then they be therby
excuſed in conſcyence / but yet i mānes lawe
they be not therby dyſchargyd / but they that
haue taken vpon them to haue knowleg of
the lawe be not excuſed by ygnoraunce of
the lawe / ne no more are they that haue a
wylfull ygnoraunce and that wold rather
be ygnoraūt then to knowe the trouth. And
therfore they wyll not dyſpoſe theym to aſk
e any councell in it / and yf it be of a thyn
ge that is agaynſt the lawe of god / or the
lawe of reaſon / no man ſhal be excuſed by
ygnoraunce / and ſo there be but fewe that
be excuſed by ygnoraūce. ¶ Studēt) What

then shall we condempne so many & so no-
table men. ¶ Doctoure) We shal not conde-
pne them/but we shall shewe them theyr pe-
ryll. ¶ Student) Yet I trust that theyr dan-
ger is not so great that they shuld be boun-
de to restytucyon. For Johñ Gerson sayth
in the sayd boke called De vnitate ecclesias-
stica consideratiõe secunda/qd cõis error fa-
cit ius. That is to say a comen errour ma-
kyth a ryght/of whiche word; as it semyth
some trust may be had/that though it were
fully admyttyd that the sayde recoueryes
were fyrst had vpon an vnlawful grou-
de and agaynste the good ordre of cõscyence
that yet neuertheles for as moche as they ha-
ue ben vsed of longe tyme/so that they ha-
ue ben taken of dyuers men that haue ben
ryght well lernyd in maner as for a lawe
that the byers partly be excusyd so that they
be not bounde to restitucion. And moreover
it is certayn that that statut of westm̃ the
nor none other statute made by mã can not
be of greater vertue or strength/than was
the bonde of matrymonye that was orday-
ned by god/And though that bonde of ma-
trymony was indyssoluble/Yet neuerthe-
les Moyses suffred a byll of refusell to the

Jues/ Which in laten is called Libellum re
udii/ & so they myght therby forsake theyr
wyfes As it apperyth deuteron. xxiii. and
therfore lyke as a dyspensacyon was suffe-
red agaynst that bonde/so it semyth it may
be agaynst this statute. ¶ Doctoure) as to
that reason that thou hast last made of a byl
of refusell/let all purchasours of lande here
what our Lorde sayth i the Gospell to the
Jues of that byll of refusell (Mathei. xix.
where he saythe thus / To the hardnes of
your hertis/ Moyses suffred you to leue your
wyfes/for at the begynnyng it was not so/
of whiche wordes Doctours holde cōmonly
ye that though suche a byll of refusell was
lawfull so that they that refused theyr wy
fes therby / shulde be without payne in the
lawe/that yet it was neuer lawful so that
it shuld be without synne. And so lyke wyse
it may be sayde in this case/ that suche reco-
uerys be suffred for the hardnes of the hert-
es of Englysshemen / whiche desyre lande
& possessyons with so great gredynes that
they can not be withdrawne from it neyt-
her by the lawe of god / nor by the lawe of
the realme. And therfore yt ryche men shuld
not take the possessyons of poore men from

them by power without colour of tytle/
that is to say eyther by open dysseson/ or by
the oncly sale of the tenaunt in tayle and so
to hold theym agaynst the expresse Worde
of the statute/ suche recouerys haue ben suf
fred. And though for theyr great multytude
they maye haplye be Without payne as to
the law of the Realme: yet it is to feare that
they be not Without offẽce as agaynst god/
and as to thy other reason that a cõmon er
rour shulde make a ryght those Wordes as
me semyth be to be thus Vnderstande / that
a custome Vsed agaynst the law of man
shalbe taken in some countres for law yf
the people be suffred so to contynue / And
yet some men call such a custome an errour
bycause that the cõtynuãnce of that custom
agaynst the law: Was partlye an errour in
the people/ for that that they Wold not obey
to the law that Was made by theyr super
yours to the contrarye of that custome: but
it is to be Vnderstande that the sayd recou
ryes though they haue ben longe Vsed may
not be taken to haue the strength of a custo
me/ for many as Well lernyd as Vnlernyd
haue alWayes spoken agaynst theym and
yet do. And furthermore as I haue here

say a custome or a prescripcyon in this realme agaynst the statutes of the realme preuayle not in the lawe. ¶ Student) though a custome in this Realme preuayleth not agaynst a statut as to the law / yet it semyth that it may preuayle agaynst the statute in conscyence / for though ygnoraunce of a statute excusyth not in the lawe / neuertheles it may excuse in cōscyence / and so it semyth that it may do of a custome. ¶ Doctoure) but yf suche recoueryes can not be brought in to a lawfull custome in the lawe / it semyth they may not be brought ī to a custom in conscyence / for cōscyence must alway be groundyd vpon some lawe: and in this case it can not be groundyd vpon the law of reason / nor vpon the lawe of god: and therfore yf the law of man serue not / there is no grounde wherupon conscyence in this case may be groūdyd / & at the begyn̄ynge of suche recoueryes they were taken to be good / bycause the lawe shuld warraunte them to be good and not by reason of any custome / and so yf the reason of the lawe wyll not serue in tho recoueryes / the custome can not helpe for an euyll custome is to be put awaye. And therfore me semyth that tho re-

couetyes be not without offence agaynst god / though haplye for theyr great multytude / and that there shuld not be as it were a subuersyon of the inherytaunce of many in this realme: as well of spyrytuall as temporall / they be without payne i the law of the realme: except such recouerynes as by the cõmon course of the law / be voydable i the law by reason of some vse / or of som other specyall mater / but what payne that is I wyll not temerously Juge / but cõmyt it to the goodnes of our Lorde whose Jugemẽts be very depe & profounde / nor I wyll not fully affirme yᵗ they yᵗ haue lãdes by such recouerynes ought to be cõpellyd to restytucyon / but this semyth to me to be good cõsell that euery man hereafter holde that is certayne and leue that is vncertayne: and that is that he kepe hym self from suche recouerynes and then he shalbe fre from all scrypulousnes of conscyence / in that behalfe. ¶ Student) It semyth that in this questyon thou põderyst greatly the sayd statute of Westm the.ii. and that though it be but onely a law made by man / that yet for as moche as it is not agaynst the law of reason / nor the law of god / thou thynkest that it must be hol

ben in conscyence / & ouer that as it semyth thou arte som what in doubte whether those recouerynes be any barr̄ to the heyre i the tayle by the lawe of the realme onles that he haue in value in dede vpon the vouchet / and that thou wylte thervpon take a respyte or thou shewe thy full mynde therin / & in lyke wyse thou thynkest as I take it that those recouerynes can not be brought i to a custom but that the longer that they be suffred to cōtynue yf they be not good by the lawe the greater is the offēce agaynst god / And therfore thou ponderyst lytle that custome / but yet thou agreest that it is good to spare the multytude of them that be paste: leste a subuercyon of the inherytaunce of many of this realme myght folowe and great stryfe and varyaunce also: yf they shulde be adnulled for the tyme past: except ther be any other especyall cause to auoyde them by the lawe as thou hast touchyd i thy last reason / but thou thynkyst that it were good that from hensforth suche recouerynes shuld be clerely prohybyt and not be suffred to be had i vse as they haue ben byfore: and thou counceyllest all men therfore to refrayne them self from suche recouerynes hereafter. ¶ Doctour) thou

lakest well that I haue sayd & accordynge as I haue mente it. ¶ Student) nowe I pray the syth I haue harde thy questyon of these recoueryes accordynge to thy desyre y thou woldest answere me to some pertycu ler questyons concernynge tayled landes: wherof thou hast at this tyme gyuen vs oc casyon to speke. ¶ Doctour) shewe me tho se questyons: & I wyl shewe the my mynde therin with good wyll.

¶ The fyrst questyon of the student concernynge tayled landes. The.xxvii.chapytre.

STudent) If a dyssesone make a gyft in the tayle to Johñ at style & Johñ at style for the redemyn ge of the tytle of the dys sesye agreyth with hym that he shall haue a cer tayne rente out of the same lande to hym & to his heyres/and for the suertye of that rent it is dyuysed that the dyssesye shall release his ryght in the lande. &c. and that suche a re couery as we haue spoken of byfore shalb

had agaynst the sayde Johñ at style to the vse of the payment of the sayd rent and of the former tayle whether standyth that recouery well with conscyence or not as thou thynkest. ¶ Doctour) I suppose it doth for it is made for the strength and suertye of the tayle whiche the dyssesye myght haue clerely defeatyd and auoydyd yf he wolde / and therfore as I thynke yf the sayde Johñ at style had grauntyd to the dysseasye only by his dede a certayne rent for the releasynge of his tytle that graunt shuld haue bounde the heyres in the tayle for euer. And then yf the dyssesye for his more suertye wyll haue suche a recouerye as byfore apperyth it semyth that that recouerye stãdeth with good conscyence. ¶ Student) It semyth that thy oppynyon is ryght good ĩ this mater. And so it apperyth that with a reasonable cause some partyculer recoueryes may stãde both with lawe & cõscyence to barre a tayle.

¶ The seconde questyon of the student concernynge tayled landes.

The.xxviii.chapytre.

The.xxviii.

Student) If tenaunt in tay-
le suffre a recouery agaynst
hym of the landes entayled
to the entent that the recou-
rers shall stande seased the
of to the vse of a certayne woman whom
he entendyth to take to his wyfe / for terme
of her lyfe / and after to the vse of the fyrste
tayle: & after he maryeth the same woman
whether standyth that recouery with cōsey-
ence though other recoueryes vpon bargay-
nes and sales dyd not. ¶ Doctoure) It is
myth yes / for though the statut be / that they
to whom the tenementes be so gyuen shuld
not haue power to alyen / but that the lādes
after theyr deth shuld remayne to theyr yssu-
es or reuert to the donours yf the yssues fay-
led: yet yf he to whom the lādes were so gy-
uen take a wyfe and dyeth seased without
heyre of his body / and the donour entre the
woman shall recouer agaynst hym the thyr-
de parte to holde in the name of her dowre
for terme of her lyfe thoughe the tayle be de-
termyned / & the same lawe is of tenaūte by
the curtesy: that is to say of hym that happy-
nyth to marye one that is an enherytrix of
the landes entayled: and they haue yssue the

Wyfe dyeth and the yssue dyeth/he shall hol
de the landes for terme of his lyfe as tenaũ
te by the curtesye / not withstandynge the
wordes of the statute which saye that after
the deth of the tenaunt in tayle without ys-
sue the landes shall reuert to the donour / &
I thynke the cause is bycause the intent of
that statute shall not be taken that it inten-
dyd to put a waye suche tytles as the lawe
shulde gyue by reason of the tayle/and so it
semyth that a lyke entent of the statute shal
be taken for ioyntoures / for els the statute
myght be somtyme a lettynge of matrymo
ny/ and it is not lyke that the statute inten-
dyd soo / and therfore it semyth that by the
onely deed of the tenaũt in tayle a ioyntour
maye be made by the intent of the statute/
though the wordes of the statute serue not
expressely for it/ for many tymes the intent
of the letter shal be taken and not the bare le
ter/as it apperyth in the same statute where
it is sayd that he to whom the landes be gy-
uen shall haue no power to alyen / yet the
same statut is construed that neyther he nor
his heyres of his body shall haue no power
to alyen / and so me thynketh that suche an
intent shal be taken here for sauyng of ioyn

vide pl. C
fo: 13.b. acc

toures. ¶ Student) trouth it is that somtyme the intent of a statute shall be taken fe ther than the expresse letter stretchyth / but yet there maye no entent be taken agaynst the expresse wordes of the statute / for that shuld be rather an interpretacyon of the statute then an exposycyon / and it can not be resonably taken / but that the intent of the makers of the statut was yt the lāde shuld remayne cōtynually in the heyres of the tayle as lōge as the tayle enduryth / & there can no ioyntour be made neyther by dede nor by recouerye / but that the tayle must therby be dyscontynued / & therfore this case of Joyntoure is not lyke to the sayd cases of tenaūt in dower or tenaunt by the curtesye / for the tytle of dowrye and of tenauntcy by the curtesye groweth moste specyally by the contynuaūce of the possessyon in the heyres of the tayle / but it is not so of Joyntoures / & therfore by the only dede of the tenaunte in tayle / there may no Joyntour be lawfully made agaynst the expresse wordes of the statute. And yf there be any made by waye of recouerye / then it semyth that it muste be put vnder the same rewle as other recoueryes muste be of landes intayled.

¶ The thyrde questyon of the student/
concernynge tayled landes.
The.xxix.Chapytre.

STudent) yf Johñ at noke beyng seasyd of landes in fee of his mere mocyon make a feoffement of a certayne landes to the intent that the feoffes shall therof make a gyfte to the sayde Johñ at noke to haue to hym and to his heyres of his body and they make the gyfte accordynge. And after the sayd Johñ at noke fallyth in to dette/ Wherfore he is taken and put in pryson/ and therupon for paymēt of his dettes he sellyth the same lande/ and for suertye of the byer he sufferyth a recouerye to be had agaynst hym in such maner as byfore apperyth/ Whether standeth that recouerye With conscyence or not. ¶ Doctoure) I wold here make a lytell dygressyon to aske the another questyon or that I made answere to thyne: that is to say to fele thy mynde howe that lawe by the Whiche the body of the dettoure shall be taken and caste in to pryson there to remayne tyll he haue payde the dette may stande With conscyence specy-

ally yf he haue no thynge to paye it with/ for as it semyth yf he wyll relynquysshe his goodes/ whiche in some lawes is called in laten Cedere bonis that he shall not be imprysoned/ & that is to be vnderstande most specyally yf he be fallen in to pouertye and not through his owne defaute. ¶ Student) there is no lawe in this realme that the defendaunt may in any case Cedere bonis/ & as me semyth yf there were suche a lawe it shuld not be indifferent/ for as to the knowlege of hym that the money is owynge to the dettoure myght Cedere bonis/ that is to say relynquysshe his goodz/ and yet retayne to hym selfe secretely great ryches. And therfore that lawe in suche case semyth more indyfferent and ryghtouse that cõmytteth suche a dettour to the cõscyence of the playntyfe to whom the money is owynge then that cõmytteth hym to the cõscyence of hym that is the dettoure/ for in the dettoure some defaute maye be assygned/ but in hym to whom the money is owynge maye be assygned no defaute. ¶ Doctoure) but yf he to whom the dette is owynge/ knoweth that the dettoure hath no thyng to paye the dette with/ & that he is fallen in to that pouerty

by some casualtye. And not throughe his owne defaute/ doth the lawe of Englande holde that he may with good conscyence kepe the dettoure styll in pryson tyll he be payde. ¶ Student) nay veryly: but it thynketh more resonable to appoynt the lybertie and the Jugement of conscyence in that case to the dette then to the dettoure/ for the cause byfore rehersyd. And then the dette/ yf he knowe the trouthe is as thou haste sayd bounde in cōscyēce to let hym go at lybertie though he be not compellable therto by the lawe. And therfore admyttynge it for this tyme/ that the lawe of Englande in this poynte is good & iuste. I praye the that thou wylte make answere to my questyō. ¶ Doctour) I wyll with good wyl/ and therfore as me semyth for as moche as it apperyth that the sayd gyfte was made of the mere lybertie & fre wyll of the sayd Johñ at noke/ & without any recompence/ that therfore it can not be other wyse taken / but that the intent of the sayd Johñ at noke as well at the tyme of the sayde feoffement/ as at the tyme that he receyued agayne the sayd gyfte in the tayle/ was that yf he happenyd afterwardes to falle in to pouertie/ that he myght alyen

the ſayd lande to releue hym with/ for how
maye it be thought that a man wyll ſo mo/
che pondre the welthe of his heyre / that he
wyll forget hym ſelf/ and ſo it ſemyth that
not only the ſayde recouerye ſtandyth with
conſcyence: but alſo that yf he had made on
ly a feoffemēt of the lande that that feoffe/
ment ſhuld be in conſcyence a good barre of
the tayle/but yf the ſayde feoffemēt & gyfte
had ben made i cōſyderacyon of any recom
pēce of money or for any matrymony or ſu
che other / then the feoffement of the ſayde
Johñ at noke ſhulde not bynde his heyre/ &
yf he then ſuffred any recouerye therof: than
that recouerye ſhuld be of lyke effecte as o/
ther recouerues wherof we haue treatyd by
fore/and the whiche I ſayd it was good to
fauour rather for theyr multytude then for
the conſcyence: and the ſame la we is that yf
the ſone and the heyre of the ſayde Johñ at
noke in caſe that the ſayd gyfte was made
without recompence alyen the lande for po
uertye after the deth of his father that reco/
uerye byndeth not but as other recouerues
do / for it can not be thought that the entent
of the father was that any of his heyres in
tayle ſhulde for any neceſſytie dyſheryte all

other heyres in tayle that shulde come after hym/but for hym selfe me thynkyth it is reasonable to Juge in suche maner as I haue sayde byfore. ¶ Student) And thoughe the intent of the sayde Johñ at noke when he made the sayde feoffemēt/and when he toke agayn the sayd gyfte in tayle: were that yf he fell in nede that he myght alyen:yet I suppose that he may not alyen though percase for the more suertye he declared his intent to be suche vpō the lyuerys of seasyn: for that itent was cōtrary to the gyfte that he frelye toke vpon hym: and when any intent or condycyon is declaryd or reserupd agaynst the state that any man makyth or acceptyth:then suche an intent or condycion is voyde by the law as by a case that hereafter folowyth wyll appere / that is to say yf a man make a feoffement in fee vpon condycyon that the feffe shall not alyen it to any man that condycyon is voyde/for it is incydent to euery state of the fee symple that he that is so seasyd may alyen. And lyke as in a fee symple there is incydent a power to alyen / so in a state tayle there is a secrete intent vnderstande in the gyfte/that no alyenacyon shal be made. And therfore though

the intent of the sayd Johñ at noke were yf he fell in to pouertie that he myght sell: & though he at the takynge of the gyfte openlye declaryd his intent to be so / yet that intent shulde be voyde by the lawe as me semyth / and yf it be voyde by the lawe it is also voyde in conscyence / and so the sayde recouerye must be taken in this case to be of the same effecte as recoueryes of other landes intayled be / and in none other maner.

¶ The.iiii.questyon of the Student / concernynge recoueryes of enherytaunce entayled. The.xxx.Chapytre.

Student) yf an annuyte be grauntyd to a man to haue and to perceyue to the graunte and to the heyres of his body of the cofers of the grauntoure. And after the grauntee sufferyth a recouere agaynst hym in a wrytte of entre by the name of a rent in dale of lyke sūme as the annuyte is of with vouchers and iugemēt after the cōmon course / and bothe partyes ītende that that annuyte shalbe recoueryd: whether shal that recouere bynde the heyre in the tayle of this annuyte. ¶ Doctour) What yf

le were a rent goynge oute of lāde of what effect shuld the recouere be then. ¶ Studēt) Je shulde be then of lyke effecte as yf it were of lande. ¶ Doctoure) And so it semyth to be of this annuyte/ for as me thynketh a rent & an annuyte be of one effecte / for the one of them shall be payde in redye money as the other shall. ¶ Studēt) that is trouth and yet ther be many great dyuersytyes by twyxt them ī the lawe. ¶ Doctour) I pray the shewe me som of tho dyuersities. ¶ Studēt) parte I shal shewe the/but I wot not whether I can shewe the all/but fyrst thou shalt vnderstande that one dyuersytye is this. Euery rent be it rent seruyce/rent charge/or rent seke/is goynge out of lande/but an annuyte goth not out of any lande/but chargeth only the person: that is to saye the grauntoure or his heyres that haue assez by dyscent / or the house yf it be grauntyd by a house of Relygyon to perceyue of theyr cofers. Also of an annuyte ther lyeth no accyon but onlye a Wrytte of annuyte agaynst the grauntour his heyres or successours/ and that Wryt of annuyte lyeth neuer agaynst the pernoure: but onlye agaynst the grauntour or his heyres/but of a rent the same ac-

cyons may lye as do of lande as the case re-
quyreth: & it lyeth somtyme of rent agaynst
the tenaunt of the grounde / and somtyme
agaynst the pernour of the rent / that is to
say agaynst hym that takyth the rent wrong-
fully / and somtyme agaynst neyther: as of
a rent seruyce assyce may lye for the lorde a-
gaynst the mesne and a dyssesoure / or som-
tyme agaynst the mesne only yf he dyd also
the dysseason. Also an annuyte is neuer ta-
ken for an asses bycause it is no fre holde
in the lawe / ne it shall not be put in execu-
cyon vpon a statute merchaūt / statu te sta-
ple ne elegit as rent may. And bycause the
sayd wryt of entre lay not ī this case of the
annuyte. And that it can not be intēdyd in
the lawe to be the same annuyte / though
be of lyke sūme with the ānuyte: ne though
the partyes assentyd and ment to haue the
same annuyte recoueryd by the sayd wryt
of entre / therfore the sayd recouerye is vay-
de in lawe and conscyence / but yf suche re-
couerye be had of rent with a voucher over
then it shall be taken to be of lyke effect as
recouerye of landes be in suche maner as
we haue treatyd of byfore.

¶ The.v.questyon of the Student/
concernynge tayled landes.

The.xxxi.Chapytre.

Student) yf landes be
gyuen to a man and to
his wyfe in the name of
his ioyntoure by the fa-
ther of the husbonde to
haue & to holde to them
and to the heyrs of theyr
two bodyes begotten / and after they haue
yssue and the husbonde dyeth: and the wyfe
alyenyth the lande / and agaynst the statut
of.xi.H.vii.sufferyth a recouerye therof to
be had agaynst her to the vse of the byer / &
after her sone and heyre apparaunt / that is
heyre to the tayle releasyth to the recouerers
by fyne and dyeth hauynge a brother on ly-
ue / & after the mother dyeth who hath ryght
to that lande the byer or the brother of hym
that releasyd. ¶ Doctoure) what is thyne
oppynyon therin / I praye the shewe me.
¶ Student) me semyth that the byer hathe
ryght / for by the sayd statut made in the.xi.
yere of kynge Henry the.vii.amonge other
thynges it is enacted that yf any woman /

Whiche hathe landes of the gyfte of her huſ/
bonde / or of the gyfte of any of the aunce/
ſtoures of the huſbonde / ſuffre any recoue/
rye therof agaynſt her by couyn / that they
ſuche recouerye ſhall be voyde / and that it
ſhal be lawfull to hym that ſhuld haue the
lande after the dethe of the woman to entre
and it to holde as in his fyrſte ryght / prouy
ded alway that that ſtatute ſhall not extend
de where he that ſhuld haue the lande after
the deth of the womā is agreable to any ſu/
che alyenacyon or recouerye: ſo that / that a/
grement be of recorde. And for as moche as
the heyre in this caſe agreed to the ſayd reco/
uerye by fyne / whiche is one of the hyeſt re/
cordes in the lawe / it ſemyth that the byer
hath ryght agaynſt that heyre that agreed
and agaynſt all that ſhall be heyres of the
tayle / and that not only by the ſayd recouey
rye / but alſo by the ſayd ſtatute wherby the
ſayd recouerye with aſſent of the heyre is af
fermyd. ¶ Doctour) though the byer in this
caſe haue ryght durynge the lyfe of the hey/
re that releaſyd / yet neuertheleſſe after his
dethe his heyre as it ſemyth maye lawfully
entre / for the agremēt wherof the ſtatut ſpe
kyth muſt as I ſuppoſe eyther be had byfo/

re the recouerye / or els at the tyme of the reco
uerye: for yf a tytle by reaſon of the ſayd ſta
tute be ones deuolute to the heyre in the tay/
le / they that right as it ſemyth can not be ex
tynct nor put away by the only fyne of the
heyre / no more than yf he had dyed and the
nexte heyre to hym had releaſyd to the byer
by fyne / in whiche caſe that releaſe coulde
not extyncte the ryght of the tayle / nor the
ryght of entre that is gyuen by the ſtatute /
ſo as me ſemyth his next heyre may ther/
fore entre. ¶ Studēt) as I perceyue all thy
dowte is in this caſe bycauſe the aſſent of
the heyre was after the recouerye / for yf it
hadde ben at the tyme of the recouerye as yf
the heyre had ben vouched to warrantye in
the ſame recouerye and he had enterryd: and
therupon the Jugement had be gyuen thou
agreeſt wel / that that recouerye ſhuld haue
auoydyd the tayle for euer. ¶ Doctour) that
is true for it is in the expreſſe wordes of the
ſtatute / but when the aſſent is after the re/
couerye / then me thynketh it is not ſo / ne
that the ryght of the fyrſt tayle / which was
reuyued by the ſayd ſtatute / ſhall not be ex/
tyncte by his fyne / no more then it ſhall in
other tayles. ¶ Student) I wyll be aduy/

sed vpon thy oppynyon in this mater / but yet one thyng wolde I moue ferther vpon this statute and that is this. Some say that by this statut all other recoueryes that haue ben had / ouer and besyde these recoueryes of Joyntoures be affermyd / for they say that syth the Parlyamēt at the makynge of this statute / knewe well that many other recoueryes were thē vsed & had to desete tayles and that it was lyke that they wold so contynue / whiche neuertheles the Parlyament dyde not prohybyte for the tyme to come as it dyde the sayde recoueryes of Joyntoures: that it is therfore to suppose yt they thought that they shulde stande with lawe and conscyence: but bycause Joyntures were made rather for the sauynge of the Inherytaunce of the husbonde / then to dystroy the Inherytaunce / they saye that the Parlyament thought and adiugyd the alyenacyons and recoueryes of such Joyntoures to be agaynst the lawe and cōscyence and not the alyenacyō of other lādes entayled / for yf they had they say / that the Parlyament wolde haue aduoyded recoueryes of tayled landes generally aswell as it dyd of recoueryes of ioyntoures. ¶ Doctour) as to that oppynyon I

Wyll answere the thus for this tyme / that
though that the makers of the sayd estatute
only put away recouerys of ioyntoures / &
not other recouerys that yet it can not be ta
ken therfore that theyr entent was that the
other recouerys shuld stande good and per
fyte / for they speke they only of ioyntoures
bycause there was no complaynte made in
the Parlyament at that tyme / but agaynst
recouerys had of ioyntoures / and therfore
it semyth that they intendyd nothynge con-
cernynge other recouerys: but yt they shuld
be of the same effecte as they were byfore &
no other wyse. And that wyll appere more
playnlye thus / thoughe the makers of the
sayd estatute entendyd to put away & ad-
null suche recouerys as shulde be made of
ioyntoures after a certayne daye lympted
in the statute / that yet they entendyd not to
aduoyde ne afferme such recouerys of ioyn
toures as were passed byfore that tyme: & yf
they intendyd not to auoyde ne afferme the
recouerys had of ioyntours byfore yt tyme:
then howe can it be taken that they intēdyd
to put awaye or afferme other recouerys
that were passed byfore that tyme and not
of ioyntoures / that wolde not afferme ne

put away recoueryes passed of ioyntoures byfore that tyme. And so as it semyth they intēdyd to spare the multytude of them that were passyd of bothe & not to comforte any to take them after that tyme. ¶ Studēt) I am cōtent thy oppynyon stande for this tyme/and I wyll aske the another questyon.

¶ The. vi. questyon of the Student/ concernynge tayled landes. The.xxxii. Chapytre.

Student) Yf tenaunt in tayle be dysseasyd / & dye & an Auncestre collaterall to the heyr ī the tayle release with a warrantye & dye/and the warrantye descēdyth vpon the heyre in the tayle/whether is he therby barred in conscyence/as he is in the law. ¶ Doctour) bycause oure pryncypall intent at this tyme is to speke of recoueryes and not of warranties: and also bycause it hathe ben of longe tyme taken for a pryncypall maxym of the lawe that it shulde be a barre to the heyre as well that claymeth by a fee symple as by a state tayly/and for that also that it was not put

aWaye by the sayd statute of Westm.the.ii.
Whiche ordayned the tayle I Wyll not at
this tyme make the any answere therin / but
Wyll take a respyte to be aduysed. ¶ Stu-
dent) then I pray the yet or We depte she We
me What Was the most pryncipall cause yt
moued the to moue this questyon of recoue-
tyes had of tayled lādes. ¶ Doctour) This
moued me therto / I haue perceyued many
tymes that there be many dyuers oppynyōs
of those recoueries: Whether they stāde With
conscyence or not / and that it is to do Wte
that many persones ren in to offence of con
scyence therby. And therfore I thoughte to
fele thy mynde i them Whether I coulde per
ceyue that it Were clere / that they scruyd to
breke the tayle in la We & conscyence / or that
it Were clerely agaynst conscyence so to bre-
ke the tayle / or that it Were a mater in do W
te / & yf it apperyd a mater in do Wte / or that
it apperyd that the mater Were Vsed clerely
agaynst conscyence / then I thoughte to do
som What to make the mater appere as it is
to the intent: that they that haue the re Wle &
the charge ouer the people as Well the spyry
tuall men as temporall men / shulde the ra-
ther endeuer them to se it reformyd for the cō

mon welth of the people/ as well in body as in soule. For when any thynge is vsed to the displeasure of god/it hurtyth not only the body but also the soule. And temporall rewlers haue not onlye cure of the bodyes/but also of the soules/ & shall answere for them yf they perysshe in theyr defaute: & bycause it semyth by the more apparaunt reason that the tayles be not broken ne fully auoydyd by the sayde recouerves/ & that yet neuerthcles the great multytude of them that be passed is ryght moche to be pōdervd Therfore it were very good to prohybyte theym for tyme to come/ to put a waye suche ambyguytyes & dowtes as ryse nowe by occasyon of the sayde recouerves/ and so they be but as snares to deceyue the people/ and so wyll they be as longe as they be suffervd to contynue. And me thynketh verily that it were therfore ryght expedyēt that tayled landes shulde from hensforth eyther be made so stronge in the lawe that the tayle shulde not be broken by recouerye fyne with proclamacyon collateralle warrantye nor other wyse/ or els that all tayles shulde be made fee symple/so that euery man that lyste to selle his lande myght selle it by his

bare feoffemēt and Without any ſcryple or
gruge of cōſcyencē:and then there ſhuld not
be ſo great expenſes ī the la We:nor ſo great
Varyaūce amōge the people:ne yet ſo great
offence of conſcyence as there is no We in
many perſons. ¶ Studēt) Veryly me thynk
eth that thy oppynyon is ryght good and
charytable ī this behalfe. And that the re
lers be bounde in conſcyence to loke Well
Vpon it to ſe it reformyd and brought in to
good ordre. And Veryly by that thou haſte
ſayde therin thou haſte brought me in to re-
membraunce that there be dyuerſelyke ſna-
tes concernynge Spyrytuall matyers ſuf-
fred amonge the people / Wherby I do Wte
that many Spyrytuall re Wlers be in great
offence agaynſt god. As it is of that poynt
yᵗ the ſpyrytual men haue ſpoken ſo moche
of that prieſtes ſhulde not be put to anſWe-
re byfore lay men ſpecyally of Felonyes &
murders / and of the ſtatute of.xlvi.E.iii.
the.iii.chapytre / Where it is ſayd that a pro-
hybycyon ſhall lye / Where a man is ſued in
the Spyrytuall courte for tythe of Wood /
that is aboue the age of.xx.yere / by the na-
me of Silua cedua as it hath done byfore /
and they haue in open Sermons and in dy

uerse othter open cōmunycacyons & coun-
saylles caused it to be openly notefyed and
knowen that they shuld be al accursed that
put preestes to answere/or that maynteyg-
ne the sayd estatute/ or any other lyke to it.
And after when they haue ryght well per-
ceyued that notwithstandyng all that they
haue done therin/it hath ben vsed in the sa-
me poyntes through all the Realme in lyke
maner as it was byfore. Then they haue
sytte styll and lette the mater passe / and so
when they haue brought many persones in
great daunger / but moste specyallye them
that haue gyuen credence to theyr sayinge/
and yet by reason of the olde custome haue
done as they dyd before/ then there they ha-
ue lefte them / but veryly it is to feare that
there is to them selfe ryght great offēce ther-
by/ that is for to say to se so many ī so great
daunger as they saye they be. And to do no
more to brynge them out of it then they ha-
ue done/ for yf it be trewe as they saye/they
ought to stycke to it with effect in all chary
tye tyll it were reformyd: And yf it be not
as they say then they haue caused many to
offende that haue gyuen credence to theym/
and yet contrarye to theyr owne conscyence

do as they dyd byfore / & that percase shulde not haue offendyd yf suche sayings had not ben. And so it semyth that they haue in these matyers done eyther to moche or to lytel. And I beseche all mythtye god that some good man may so call vpon all these matyers that we haue now comonyd of / so that they that be in Auctorytie maye somwhat ponder them / and to ordre them in suche maner that offence of conscyence grow not so lyghtly therby hereafter as it hath done in tyme paste. And verely he that on the crosse knew the pryce of mānes soule wyl hereafter aske a right strayte accōpte of rewlers / for euery soule that is vnder them and that shall perysshe thorugh theyr defaulte.

¶ Addycyon.

¶ Thus I haue shewed vnto the in this lytle Dyalogue how the lawe of Englande is grounded vpon the lawe of reason / the lawe of god / the generall customes of the realme / and vpon certayne pryncyples that be called maxymes vpon the partycular customes vsyd in dyuerse Cytyes & countryes / and vpon statutes whiche haue ben made in dyuerse Parlyamentes by our soueraygne lorde the kynge and his progeny

toures / and by the Lordes ſpyrytuall and temporall / and all the Cõmons of the realme. And I haue alſo ſhewed the in the nyneth chapytre of this boke / Vnder what maner the ſayd generall cuſtomes and mayntenes of the lawe may be prouyd and affermyd yf they were denyed / and dyuers other thynges be conteyned in this preſent Dyalogue / whiche wyll appere in the table / that is in the latter ende of the boke / as to the reders wyll appere. And in the ende of the ſayde dyaloge I haue at thy deſyre ſhewed the my conceyte concernynge recouerynes of Tayled landes / and thou haſte vpon the ſayd recouerynes ſhewed me thyne oppynyon. And I beſeche our lorde ſet them ſhortely in a good clere waye / for ſurelye it wyll be ryght eppedyent for the well ordrynge of Conſcyence in many perſones that they be ſo. And thus god of peas & loue be alwaye with vs. Amen.

¶ Here endeth the fyrſte Dyaloge in Englyſſhe / with new Addycyons bet wyxt a Doctoure of Dyuynyte / and a Student in the lawes of Englande.

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